Supreme Court, U.S.
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In The

Supreme Court of the United States

LIEU B. HOANG,
Petitioner,
vs.

JERRY L. UMMEL, Magistrate
Allen Superior Court – Small Claims Division,
JAMES A. HERMAN, Sheriff
Allen County Sheriff's Department,
RUSSEL P. YORK, Chief
Fort Wayne Police Department,
PGPM, Inc., JAMESTOWN HOMES, Inc.,
R. SCOTT PERRY, RANDALL L. HOSFORD,
and NATIONAL MOVING SYSTEMS, Inc.,
Respondents.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

LIEU B. HOANG, LLD
Pro se Petitioner
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85 pg

QUESTIONS PRESENTED FOR REVIEW

1. Whether title **28 U.S.C. § 455 (a) & (b)** mandatorily requires the district judge to disclose his or her conflict of interest along with his or her bias and prejudice against a party, and to recuse himself or herself from the proceedings.

2. Whether the party waived the issue of conflict of interest, bias and prejudice on appeal pursuant to title **28 U.S.C. § 455 (a) & (b)** where the district judge's conflict of interest, bias and prejudice were not known nor were they disclosed to the party during the proceedings in the district court.

3. Whether the ***Rooker-Feldman*** doctrine applies where the plaintiff's personal property was seized and taken away without due process or a state court order as required by **IC 32-7-6-1.**

4. Whether the ***Rooker-Feldman*** doctrine applies where the plaintiff does not have any legal channel, let alone a reasonable opportunity, to challenge the seizure of his personal property and to recover it in state court

5. Whether the ***Rooker-Feldman*** doctrine also bars injunctive relief to bring criminal conspirators to justice as required by title **42 U.S.C. § 1987.**

6. Whether the ***judicial*** immunity applies where the state magistrate knew that he lacked subject matter jurisdiction and had acted in the face of the clearly valid statute and case law which expressly deprived him of jurisdiction.

7. Whether the ***qualified*** immunity applies where the law-enforcement officers had violated the established constitutional rights and laws instead of simply serving the ejectment order and/or waiting for the state court order allowing the removal of plaintiff's personal property as required by **IC 32-7-6-1.**

8. Whether the court of appeals should have reversed and vacated the district court's decision of dismissing the cause with prejudice where the claim against other defendants, who are not covered by the ***Rooker-Feldman*** doctrine, the ***judicial*** immunity and/or the ***qualified*** immunity, is concerned.

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The Petitioner, Lieu B. Hoang, respectfully petitions the Court for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

- The opinion of the U.S. Court of Appeals for the Seventh Circuit is unpublished and is set forth in the Appendix at A-2.

- The opinion of the U.S. District Court for the Northern District of Indiana is unpublished and is set forth in the Appendix at A-7.

JURISDICTION OF THE COURT

The judgment of the U.S. Court of Appeals for the Seventh Circuit was entered on December 17, 2001 (See A-1). On the Petitioner's Application No. 01A699, Justice John Paul Stevens granted Petitioner's request that the time for filing a Petition for Writ of Certiorari be extended to and including May 16, 2002.

The jurisdiction of the Court is invoked pursuant to **28 U.S. C. § 1254(1).**

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

Amendment IV: ***Unreasonable searches and seizures.***

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, ...

Amendment XIV: ***Section 1. Citizens of the United States.***

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

18 U.S.C. § 241: ***Conspiracy against rights.***

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; ... They shall be fined under this title or imprisoned not more than ten years, or both; ...

18 U.S.C. § 242: ***Deprivation of rights under color of law.***

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; ...

28 U.S.C. § 455: ***Disqualification of justice, judge, ...***

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, ...

(2) [O]r a lawyer with whom he previously practice law served during such association as a lawyer concerning the matter.

(4) He knows that he, individually or as a fiduciary, or... has financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(c) A judge should inform himself about his personal and fiduciary financial interests...

(e) No justice, judge, or magistrate shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis of disqualification.

42 U.S.C. § 1982: ***Property rights of citizens.***

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

42 U.S.C. § 1983: ***Civil action for deprivation of rights.***

Every person who, under color of any statue, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. ...

42 U.S.C. § 1985: ***Conspiracy to interfere with civil rights.***

(2) Obstructing justice; intimidating party, witness, ... If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, ... or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of

depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; ...; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injured or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1986: ***Action for neglect to prevent conspiracy.***

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section **[42 U.S.C. § 1985]**, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, ...

42 U.S.C. § 1987: ***Prosecution of violation of certain laws.***

The district attorneys [United States Attorneys], marshals, and deputy marshals, the commissioners [magistrate judges] appointed by the circuit [district] and territorial courts, with power to arrest, imprison, or bail offenders, and every other officer who is especially empowered by the President, are authorized and required, at the expense of the United States, to institute prosecutions against all persons violating any of the provisions of chapter seven of the title "CRIMES," and to cause such persons to be arrested, and imprisoned or bailed, for trial before the court of the United States...

Rule 5 ***of Federal Rules of Civil Procedure:***

(d) Filing; Certificate of service. All papers after the complaint required to be served upon a party, together with a certificate of service, must be filed with the court within a reasonable time after service, ...

Rule 8.1 ***of Local Rules of the United States District Court for the Northern District of Indiana for Pro se Complaints.***

Form Complaint. The following claims of parties appearing on their own behalf shall be on forms supplied by the clerk of the court:

(a) The Civil Right Acts, **42 U.S.C. § 1983**;

IC 32-7-6-1. ***Court order – Removal by landlord.***

(a) If a landlord is awarded possession of a dwelling unit by a court under **IC 32-6-1.5**, the landlord may seek an order from the court allowing removal of a tenant's personal property.

(b) If the tenant fails to remove the tenant's personal property before the date specified in the court's order issued under subsection (a) the landlord may remove the tenant's personal property in accordance with the order and deliver the personal property to a warehouseman under section 2 **[IC 32-7-6-2]** of this chapter.

IC 33-5-2-4. ***Small Claims Docket – Jurisdiction – Allen County Small Claims Division.***

(b)(2) Possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed six thousand dollars ($6,000).

STATEMENT OF THE CASE

This case involves issues of major significance relating to the District Judge's conflicts of interest as defined by **28 U.S.C. § 455** by receiving a regular salary from his former law firm that represents two (2) of the Defendants in this case, the application of the ***Rooker-Feldman*** doctrine where the seizure of the Plaintiff's personal property is distinct or happened independently from the state court's eviction order, the application of judicial immunity where the State Magistrate knew that he lacked subject matter jurisdiction and acted in the face of the valid statute and case law that expressly deprived him of jurisdiction, and the qualified immunity that the Defendants did not seek nor for which are they qualified. The facts are as follows:

On August 10, 1976, Lieu B. Hoang (Hoang) and his recently

deceased mother purchased the ownership of the membership with a cooperative housing corporation known as Jamestown Homes, Inc.[1*] (Jamestown) through which they have been entitled to a housing unit at 1682 Hobson Road, Fort Wayne, Indiana with the monthly ***"carrying charges"*** as their share for the cost of mortgage, insurance, maintenance and taxes on the property. The member's vested interest and rights to his housing unit are protected under state law set by the Indiana Court of Appeals in ***Cunningham v. Georgetown Homes, Inc.***, 708 N.E.2d 623 (Ind. App. 1999).[2*] Hoang's vested interest in his cooperative housing unit is approximately $97,528, which is the total amount of all ***"carrying charges"*** he has paid since August 10, 1976 along with the indemnity deposit and subscription price. Neither Hoang nor his mother has ever sold or transferred the ownership or the vested interest to anyone else.[3*]

In August of 1981, the Honorable William C. Lee left his position as partner in the law firm ***"Hunt, Suedhoff, Borror, Eilbacher & Lee"*** located at 803 S. Calhoun Street, Suite 900, Fort Wayne, Indiana to become the District Judge for the Northern District of Indiana. Although he became District Judge and currently Chief Judge, he has continued to draw a salary from said law firm[4*] which represents two (2) of the Defendants, R. Scott Perry and National Moving Systems, Inc., in this case. He has also owned three apartment complexes which have been represented by ***"Haller & Colvin"***, a firm that is also representing another Defendant, Sheriff James Herman, in this case. The result of an investigation also indicates that when Judge Lee was a partner with ***"Hunt, Suedhoff, Borror, Eilbacher & Lee"***, his law firm represented Jamestown through its insurance company.

In 1985, the Department of Housing and Urban Development

1* See Appendix T at A-45.

2* The Indiana Court of Appeals has held in ***Cunningham*** that member of cooperative housing corporation has vested interest and rights with reference to the housing unit, which he or she may not be forced to simply forfeit in event that breach of occupancy agreement is found, and instead, the trial court may only direct proceedings for the sale of member's vested interest which will insure that his or her rights are adequately protected.

3* See the reverse side of Appendix T at A-46.

4* See Appendix E at A-23. Those facts were not disclosed to Hoang.

(HUD) approved the contract awarded to Paul Gicks Property Management Agency to manage Jamestown by its members.

In 1997, Laura Jackamo purchased Paul Gicks Property Management Agency and used its initials, PGPM, instead of changing its name in order to go around the contract's nullification by HUD regulators. Jackamo then sent Kelly Knowland (Knowland) and Fred Gould (Gould) to Fort Wayne to manage Jamestown where they started a policy of harassing and stealing personal property of non-white members. Hoang was Asian-American.

Sometime after January 6, 2000, when his mother passed away, Hoang noticed some of his personal property missing, including at least $5,000 in cash. Hoang immediately changed the lock to his housing unit. Circumstantial evidence indicated that the employees of PGPM were responsible for his missing personal property because they had a key to his housing unit, and a witness saw Gould running out of Hoang's housing unit when she arrived to collect the mail. The witness also saw Randall L. Hosford (Hosford) nearby with a two-way radio.

On February 23, 2000, PGPM's property manager, Robyn Bolle, reacted by sending Hoang a letter threatening to evict him if he would not supply them with a key to enter his housing unit when he was not home for so-called inspection. Although there was no such requirement of supplying them with a key in the occupancy agreement, but since they had either refused or failed to appear for inspections by appointment when someone was waiting for them, Hoang supplied them with a key after placing all of his valuable property into two bed rooms used as storage for safekeeping. That was acceptable to them for awhile, but on January 18, 2001, although there was no need for repair or inspection, they demanded to have the keys for those two rooms too under the pretext of so-called inspection.

On March 30, 2001, Gould entered Hoang's housing unit for a so-called inspection but could not enter a locked room where Hoang had placed all of his valuable property. On April 4, 2001, PGPM, by Jamestown's attorney R. Scott Perry (Perry), filed a Notice of Claim for ejectment of Hoang in the Small Claims Division of Allen Superior Court.

On April 13, 2001, Hoang filed a Notice of Counterclaim for the damaged property that resulted from their failure to repair the roof (despite the fact that they loved to do the inspections) and for the missing property that resulted from their previous so-called inspections. This was Hoang's defense for not allowing them access to a locked room where he guarded all of his valuable property. In this Notice of Counterclaim, PGPM was added as the Third-Party Defendant. [5*]

On April 18, 2001, Perry returned Hoang's phone call to inform Hoang that he would call two witnesses, Gould and Knowland, that he was not worried about Hoang's Counterclaim for damaged and missing property because it was irrelevant and that he would ask Magistrate Jerry L. Ummel (Ummel) to hear it bifurcately.[6*] Hoang thought Perry would file a motion to that effect and had therefore prepared the argument and the evidence to convince Magistrate Ummel that it could not be tried separately from the claim for eviction because it was his defense for not allowing them access to a locked room where he had hidden all of his valuable property from them.

At or about 9:00 AM of the trial date on April 20, 2001, Hoang saw Perry borrowing a court file from Magistrate Ummel at the counter outside the courtroom where they had a brief ***ex parte*** conversation. Hoang was too far away to hear what they were discussing, but at that moment his sister A. Loni Hoang, stepped out of the courtroom to look for him and overheard the conclusion of their ***ex parte*** discussion as follows:

> ***UMMEL:*** ***I don't have any problem with finding some ground to evict him.***
>
> ***PERRY:*** ***That would make Jamestown people really happy. They've really wanted to get rid of him.***
>
> ***UMMEL:*** ***Okay, consider it done. I'll evict him.*** [7*]

About thirty minutes later when the state court was in session, Perry returned said court file to Magistrate Ummel, who used it to call Hoang's name for the trial to be held later that morning.

5* See Appendix S at A-43.

6* R.O.P., Doc. 19, P. 2, ¶ 4.

7* See Appendix F at A-24 & 25.

In his Answer to Amended Complaint filed with the District Court, Perry has admitted that he ***"did deliver the file to the Honorable Jerry L. Ummel who may have referenced that file in calling Hoang's name".*** [8*]

When the trial was about to start without a court reporter, Hoang immediately called Magistrate Ummel's attention to the missing court reporter. But, instead of thanking Hoang for calling his attention to the missing court reporter, Magistrate Ummel had angrily questioned Hoang's motive for having the proceeding recorded before bringing in a court reporter.

Then, without Perry's written or verbal motion to bifurcate the trial in open court, Magistrate Ummel announced his decision of not hearing Hoang's Counterclaim for damaged and missing personal property at the trial and instructed Hoang not to present any evidence of his Counterclaim. [9*]

Perry then started a direct examination of his witness, Kelly Knowland, without calling him to the witness stand. To preserve the issue for appeal, Hoang immediately objected. Magistrate Ummel not only overruled Hoang's objection but also became so defensive that he had warned Hoang not to do that again. [10*] The rest of the witnesses were called to the witness stand when they testified.

At the conclusion of the trial, Magistrate Ummel expressed wonder as to what Hoang had in those rooms that they were not allowed access, [11*] which he said was a minor violation of the lease agreement to serve as ***"some ground"*** to evict Hoang. This is what Magistrate Ummel had promised Perry during their ***ex parte*** meeting, *supra*, and so, on April 23, 2001, Magistrate Ummel issued an order directing Hoang to vacate the premises within seven (7) days. This eviction order was given as if Hoang

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8* R.O.P., Doc. 19, P. 2, ¶ 5.

9* See Appendix R at A-41.

10* See Appendix R at A-42 (the first eight lines).

11* See Appendix R at A-42. Magistrate Ummel would have known the valuable property inside those locked rooms if he did not listen to Perry during their ***ex parte*** meeting to bar Hoang from presenting the evidence of his Counterclaim for damaged property due to their failure to repair the roof and for missing property resulted from their previous so-called inspections which was the reason they were not allowed access to those locked rooms.

was a tenant [12*] instead of directing proceedings for the sale of Hoang's vested interest to insure that his rights as a member were adequately protected as mandated by the Indiana Court of Appeals in ***Cunningham v. Georgetown Homes, Inc.***, *supra*.

On May 1, 2001, Hoang filed a Motion to Correct Errors in which he called Magistrate Ummel's attention to the ***Cunningham*** decision. Said motion was served upon Perry the same day and a hearing was scheduled for May 9, 2001.

On May 3, 2001, Kelly Knowland went to the Clerk's office of the Allen Superior Court – Small Claims Division to request a Writ of Restitution with a form in which Perry was listed as the attorney for Jamestown. However, the words ***"Party Requesting Writ"*** and ***"Attorney Number"*** were marked out with ***"XXX"*** and were filled in with Jamestown's telephone number and Knowland's first name [13*] to make it look like Perry, although Jamestown's attorney, was not involved. And so, in his Answer to Amended Complaint filed with the District Court on June 4, 2001, Perry denied any involvement with said Writ of Restitution.[14*] But Perry's deception caught up with his greed on July 10, 2001 when he filed his ***"Affidavit of Attorney Fees"*** to get Hoang's money in which he listed on ***"05/02/01"*** he had spent ***"0.3"*** hour to work on ***"Requested Writ of Restitution"***.[15*]

On Sunday, May 6, 2001, Knowland contacted Thomas Feichter (Feichter), President of National Moving Systems, for a deal to transport and hide a very large amount of Hoang's personal property, including many tons of Hoang's computer systems and electronics equipment.[16*] They had also planned to arrest Hoang if he tried to stop them from stealing his personal property by calling Hosford, a Fort Wayne Police Officer who worked for them, to arrest Hoang. Hosford later did carry out their arrest plan.[17*] They also agreed to deny their possession of Hoang's personal property to federal authority. In its Answer to

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12* See Appendix Q at A-40.
13* See Appendix P at A-39.
14* R.O.P., Doc. 19, P. 4, ¶ 10.
15* See Appendix N at A-36.
16* See Appendix J at A-32. (An account was opened on May 6, 2001).
17* See Appendix L at A-34 & 35.

Amended Complaint filed with the District Court on June 5, 2001, National Moving Systems, by Chief Judge Lee's former law firm ***"Hunt suedhoff Kalamaros, LLP"***, denied having any of Hoang's personal property in its possession.[18*]

On the next day, May 7, 2001, Perry filed a Motion for Continuance of the May 9, 2001 hearing on Motion to Correct Errors.

At or about 8:15 AM on the following day, May 8, 2001, Hoang ran downstairs to see what was going on when Sheriff James Herman's deputies broke open the back door of his housing unit where they pointed their guns at him and ordered him to lie face down on the floor while they searched his house. They even broke some furniture in an effort to find something illegal to arrest him. After finding nothing illegal, they literally threw him out of his housing unit and told him that he would be arrested for trespassing if he stepped back into his housing unit. They did not let him take out any personal property, including the exempt property under **IC 32-7-6-2(a).** They then brought in Knowland and Gould along with Feichter and his employees, and the looting frenzy followed. When they left, those deputies took with them three (3) boxes of Hoang's personal property but no report was written regarding the confiscation of those boxes.

After being thrown out of his housing unit, Hoang went to the Allen Superior Court – Small Claims Division to request an emergency hearing to stop them from seizing his property until the next day when his Motion to Correct Errors had been heard and ruled upon. When Hoang told him the sheriff's deputies had arrived and had thrown him out, Magistrate Ummel smiled and pretended to cough to hide his pleasure. He then refused to stay his eviction order until the next day by saying it was too late and by writing down the following reason on the order form:

> ***DEFD. requests stay of eviction***
> ***AFTER the sheriff has arrived***
> ***for the move-out. Motion denied.*** [19*]

18* R.O.P., Doc. 22, P. 1 & 2. ¶ 3.

19* See App. 0 at A-38. By Ummel's logic, how late it would be when the Indiana appellate court voided his eviction order for lack of jurisdiction!

Magistrate Ummel then continued the May 9, 2001 hearing on Motion to Correct Errors to May 29, 2001 to give them more time to swallow all of Hoang's personal property.

Instead of defending his property violently like many people would and in fact have done, Hoang rushed to the U.S. District Clerk's office to ask for a **§ 1983** complaint form, but it did not have one.[20*] So Hoang settled for some blank sheets of paper to write a four-line-civil-rights complaint against Ummel, Herman, Perry, PGPM and Jamestown, and a Motion to Stay State Court Eviction Order to stop them from looting and seizing his personal property without due process under **IC 32-7-6-1.**

After said Complaint and Motion were filed at or about 10:03 AM, Hoang immediately served the Complaint and said Motion along with the Summons to every Defendant. After receiving copies of the Complaint, Motion and Summons for PGPM and Jamestown at Jamestown's office, Knowland immediately paged Hosford there to arrest Hoang as planned. According to Hosford's police report, he was off duty that day, May 8, 2001, but was paged several times. The first page was sent at exactly ***"1107 Hrs"*** by Knowland [21*] just after Hoang served him the District Court's Summons, Complaint and Motion.

When Hosford arrived, Hoang had already gone back to the District Court to wait for its decision on said Motion. Meanwhile, Gould, Feichter and his employees were busily moving the rest of Hoang's personal property that was not taken during their looting frenzy into a semi-truck. For two days, according to Feichter's invoice of May 9, 2001, they moved approximately ***"25,600 lbs"*** of Hoang's personal property to National Moving Systems,[22*] which constituted conspiracy to commit theft and possession of stolen property as **IC 32-7-6-1** requires:

> ***(a) If a landlord is awarded possession of a dwelling unit by a [state] court under IC 32-6-1.5, the landlord***

20* Local Rule 8.1 of the ***U.S. District Court for the Northern District of Indiana*** requires the District Court to assist the ***pro se*** plaintiffs with procedure by providing them with Complaint Forms for Civil Rights Act, Social Security Act, and employment discrimination.

21* See Appendix L at A-34.

22* See Appendix K at A-33.

may seek an order from the [state] court allowing removal of a tenant's personal property.

(b) If the tenant fails to remove the tenant's personal property before the date specified in the [state] court's order issued under subsection (a) the landlord may remove the tenant personal property in accordance with the order and deliver the personal property to a warehouseman under section 2 [IC 32-7-6-2] of this chapter.

There is no state court order allowing the removal of Hoang's personal property. Besides, PGPM is not a landlord but a managing agency for Jamestown. In its Answer to Amended Complaint filed with the District Court on June 5, 2001, National Moving Systems, by Chief Judge Lee's former law firm, denied having Hoang's personal property in its possession,[23*] despite its two invoices to Jamestown[24*] and Hosford's police report.[25*]

After 4:15 PM that day, May 8, 2001 when the District Court denied Motion to Stay State Court's Eviction Order with the very first reason that it did not think ***"any of the defendants had been served"***, Hoang went to National Moving Systems and requested Feichter to transport his personal property to another location. Feichter refused by stating that Hoang's personal property was now theirs, that he had a deal with Kelly (Knowland) regarding those property and that no one ever got anything that good back. Feichter then paged Hosford there to arrest Hoang as planned. Hoang immediately left. So when Hosford arrived, he missed Hoang again and stated in his police report that: ***"I also recv'd a page from Mr. T.J. Feichter of Ntl. Moving..."*** [25*]

They were so possessive of Hoang's personal property because **IC 32-7-6-3** has specified:

(a) A warehouseman that receives property under this chapter holds a lien on all of that property...

Its sequel, **IC 32-7-6-4**, is even more generous to them than that:

If a tenant does not claim the tenant's property within (90) days after receiving notice under section 2 [IC 32-

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23* R.O.P., Doc. 22, P. 1 & 2, ¶ 3.

24* See Appendix J & K at A-32 & 33.

25* See Appendix L at A-34.

7-6-2] of this chapter, a warehouseman may sell under IC 26-1-7-210(2) property received under this chapter. [26*]

Since there was no legal channel to stop them from stealing his personal property, Hoang tried to save only his mother's gold and jewelry that had been passed on for many generations by calling 911 at a gas station to ask the police to retrieve those items inside a safe along with $125,000 in cash in the locked room where they were not allowed access. A few minutes later, Gregory Kinsey, a Fort Wayne Police Officer under Chief Russel P. York, arrived at said gas station where he told Hoang that he had been dispatched to his housing unit earlier that afternoon when his sister tried to retrieve those items.[27*] Kinsey said they refused to let her in to get those items by claiming that the state court had awarded them everything. Therefore, he could not retrieve those items either but asked to read the eviction order to see what they had been awarded. He also read the ***Cunningham*** decision. During the interim another city police officer, David Nelson, arrived and joined in to read those documents.

After reading those documents, Kinsey told Hoang to go back to Jamestown with him where he would tell them to stop removing Hoang's personal property because the [state] judge would have to go by the ***Cunningham*** decision and reverse the eviction order. When they arrived at Jamestown's parking lot, Gould, Feichter and his employees were busily moving Hoang's personal property into Freichter's semi-truck. Although Kinsey had informed Gould the ***Cunningham*** decision, he not only refused to stop removing Hoang's personal property but also paged Hosford there to arrest Hoang as planned.

During the interim, more city police officers arrived. Feichter demanded them to arrest Hoang for something like trespassing or intimidation. But those officers did not think what Hoang

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26* As a result, Hoang has not seen any of his personal property including computer systems, electronics equipment, cash along with his mother's gold and jewelry – valued totally at least $250,000 – since then. Also as a result, almost a half of lawyers and judges in Indiana are also landlords such as Chief Judge Lee who has owned three (3) apartment complexes.

27* In his police report Hosford also mentioned ***"The Def.'s family came to JTH @ 1455 hrs."*** See Appendix L at A-34.

did – when he came to Jamestown's office that morning to serve the District Court's Summons, Complaint and Motion, and later to National Moving Systems [28*] – was a crime.

Then, according to Hosford's police report, he had ***"t.x'd FWPD comm."*** to ask them ***"to have Mr. Hoang wait for me."*** [29*] When he arrived, Hosford spoke to those officers including Kinsey and Nelson for awhile and then arrested Hoang for trespassing. Hosford, however, lied in his police report to blame the arrest on Hoang's admission of getting caught as follow:

> ***Once I also learned from Mr. Hoang that he had been found to returned to 1682 Hobson Rd./JTH, I placed Mr. Hoang under arrest for crim. Tres.*** [29*]

He then searched Hoang's car and confiscated all legal papers including the Returns of Service for the District Court's Summons, and named Feichter as a witness along with those officers. [30*] But this trespassing charge was later dismissed at the request of Allen County Prosecuting Attorney.

Since Magistrate Ummel was too racist to deal with, Hoang retained a local white attorney, Donald J. Frew, to request Magistrate Ummel, at the May 29, 2001 hearing on Motion to Correct Errors, for the return of Hoang's personal property that had been seized by them on May 8 and taken to National Moving Systems without a state court's order as required by **IC 32-7-6-1.** But Magistrate Ummel refused to order them to return Hoang's personal property by stating that ***"is a separate issue",*** [31*] not related to his eviction order, and by suggesting Frew to make a deal with Perry (who had failed or had refused to appear for said hearing) to get Hoang's personal property back.

28* On the other hand, their action of paging Hosford to arrest Hoang and did in fact arrest Hoang after receiving the District Court Summons and Complaint constitutes the violations of **18 U.S.C. §§ 241 & 242** and **42 U.S.C. § 1985(2)** for conspiracy to obstruct justice, to intimidate a party and a witness.

29* See Appendix L at A-34.

30* See Appendix M at A-35.

31* See Appendix I at A-31, last ¶, or Appendix H at A-28, ¶ ¶ 6 & 7. The Seventh Circuit fails to consider the seizure of Hoang's personal property (without due process/state court order as required by **IC 32-7-6-1**) a separate issue from the eviction order when it ruled on the ***Rooker-Feldman*** doctrine

On June 26, 2001, Magistrate Ummel issued an order denying Hoang's Motion to Correct Errors in which he did not even mention Hoang's personal property or Hoang's vested interest in the housing unit under the ***Cunningham*** decision. Magistrate Ummel, however, tried to deceive the Indiana Court of Appeals into affirming his eviction order by lying that: ***"Plaintiff Jamestown Homes, Inc. appears by counsel"*** [32*] and that ***"On or about April 12, 2001, the Defendant Lieu Hoang filed a Third Party Claim against PGPM, Inc."*** [33*] as a ***"ground"*** for him to try the Counterclaim bifurcately to evict Hoang. For that ***"ground"***, Magistrate Ummel or someone on his behalf had tampered with Hoang's Notice of Counterclaim by crossing out Hoang's word ***"Counter"*** and writing in his word ***"3rd Party"*** on top of it.[34*] The Court's attention is, therefore, being called to the fact that at the trial on April 20, 2001 when he announced his decision of not trying Hoang's Counterclaim with their Claim for ejectment, Magistrate Ummel had referred to it as ***"Counter-Claim"***.[35*]

The Court's attention is also called to the facts that Magistrate Ummel knew in advance that:

1. He issued an eviction order in the face of the clearly valid case law, ***Cunningham, supra***, expressly depriving him of jurisdiction to evict Hoang as if Hoang was a tenant by mentioning Hoang's rights under ***Cunningham*** at the hearing for Motion to Correct Errors.[36*] But then refused to comply with it by denying said Motion to Correct Errors instead of directing proceedings for the sale of Hoang vested interest to insure that Hoang's rights (as a cooperative member) were adequately protected as mandated by ***Cunningham at 627.***

2. His Small Claims Court, with a $6,000 jurisdictional limit, did not have jurisdiction as he mentioned in his eviction order that Hoang resided at Jamestown since 1976 [37*] (when the membership was purchased[38*] and the original occupancy agreement

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32* See Appendix G at A-26, the first line.
33* See Appendix G at A-26, ¶ 5.
34* See Appendix S at A-43.
35* See Appendix R at A-41.
36* See Appendix I at A-31, ¶ 1, line 9.
37* See Appendix Q at A-40, ¶ 1.
38* See Appendix T at A-45.

was signed with the accumulating vested interest of $97,528). So, in his order to deny Motion to Correct Errors, Ummel did not mention 1976 again but rewrote said date by stating that: ***"The parties had entered into a Cooperative Housing Occupancy Agreement in January 2000."*** [39*] to deflate Hoang's accumulating vested interest to $5,986 which is within his jurisdictional limit.

3. His Small Claims Court does not have subject matter jurisdiction under **IC 33-5-2-4(b)(2)** or **IC 33-4-3-7(2)** in the first place because the Indiana Court of Appeals has defined in ***Cunningham*** that the member of cooperative housing corporation is not a tenant and that the cooperative/member relationship is not the same as the landlord/tenant relationship. ***Id. at 627.***

On May 25, 2001, Hoang filed an Amended Complaint with the U.S. District Court [40*] adding three additional Defendants (Hosford, Fort Wayne Police Chief Russel P. York, and National Moving Systems) in which Hoang specified in detail all necessary facts regarding the inferences of jurisdiction, the fair notice of claim and the claim for which relief should be granted. Hoang also specifically requested the District Court to:

> *(a) Direct local law enforcement, resident FBI agents, and the United States Attorney's Office to conduct appropriate investigations and prosecutions to bring those criminal conspirators to justice.*
>
> *(b) Direct the U.S. Urban and Housing Development to review and terminate the contract with PGPM, Inc. concerning Jamestown Homes, Inc.*
>
> *(c) Direct the return of Plaintiff's housing unit at 1682 Hobson Road pursuant to* ***Cunningham v. Georgetown Homes, Inc.*** *or the sale of his vested interest in the amount of $97,528 which is the combination of all carrying charges he has paid since August 1976 as his share for the mortgage, maintenance and taxes on the property, indemnity deposit and subscription price at the current market value plus interests to insure that his rights are adequately protected.*

39* See Appendix G at A-26, ¶ 1.

40* Two original Defendants, Perry and National Moving Systems, have retained Chief Judge Lee's former law firm to represent them. Sheriff Herman has retained Chief Judge Lee's real estate law firm to represent him.

(d) Direct the return of Plaintiff's personal property of approximately $250,000 especially his mother's gold and jewelry, that had been passed on for many generations, which are not replaceable, and damages, if any, and:

(d) Punitive damages.

On May 29, 2001, Hoang went to National Moving Systems first to serve the Summons and Amended Complaint on Feichter who not only refused to accept the Summons and Amended Complaint but also paged Hosford there again to arrest Hoang as planned. Feichter physically tried to hold Hoang there until Hosford could arrive but was unsuccessful.[41*] While Hosford was on his way to National Moving Systems to arrest Hoang, Hoang went to Fort Wayne Police Department to serve the Summons and Amended Complaint on him and Chief York without incident by leaving the documents with a receptionist.

The next day, Hosford called Hoang to ***"acknowledge"*** his receiving the Summons and Amended Complaint by threatening to kill Hoang if he would not drop the case against them. The District Court was notified of Hosford's threat through a request for preliminary injunction but nothing was done. Hosford continued making his threatening phone calls almost everyday until July 30, 2001 when the District Court dismissed this case against them with prejudice.

On August 3, 2001, Hoang filed a Notice of Appeal to the U.S. Court of Appeals for the Seventh Circuit. On Friday, December 14, 2001, the case was submitted to a panel of three Circuit Judges that hastily affirmed the District Court's decision on the following Monday, December 17, 2001.[42*]

Since there is no order allowing their seizure and removal of Hoang's personal property under **IC 32-7-6-1**, the Indiana Appellate Court is reviewing only issues related to the eviction order.

41* The Court's attention is being called to Hosford's police report (for the May 8 arrest, see Appendix L at A-35) at the last paragraph where he revealed his plan for such future arrests by lying that: ***"I met Mr. Hoang - Off. Elmer @ the ACLU & once again advised Mr. Hoang that if he returned to 1682 Hobson/JTH I would arrest Mr. Hoang again for crim. tres. Mr. Hoang said he understood but he did not say he would not return."***

42* See Appendix B at A-2.

REASONS FOR GRANTING THE WRIT

I. REVIEW IS WARRANTED BECAUSE THE DECISION OF THE SEVENTH CIRCUIT CONFLICTS WITH THE DECISION OF THE FIFTH CIRCUIT IN REGARD TO DISTRICT JUDGE'S MANDATORY REQUIREMENTS FOR DISCLOSURE AND RECUSAL PURSUANT TO 28 U.S.C. § 455 (a) & (b), AND THE COURT HAS NOT DECIDED WHICH CIRCUIT'S DECISION IS CORRECT IN THIS IMPORTANT ISSUE.

A. The Fifth Circuit mandatorily requires the District Judge to disclose any conflict of interest, bias and prejudice against a party and disqualify himself or herself under § 455 (a) & (b).

In May 1968, H. Rap Brown was convicted of firearms violation in the U.S. District Court for the Eastern District of Louisiana. In August 1973, his conviction was affirmed by the Fifth Circuit. *See* ***United States v. Brown,*** 484 F.2d 418 (5th Cir.1973), and his certiorari was denied by the Court at 415 U.S. 960 (1974), 94 S.Ct. 1490, 39 L.Ed.2d 575.

In May 1974, newly discovered evidence indicated that the District Judge who convicted Brown for firearms violation had personal bias and prejudice against Brown by telling a patent attorney before the May 1968 trial that he was going to preside at Brown's trial and "that he was going to get that nigger [sic]." *See* ***United States v. Brown***, 539 F.2d 467, 468 (5th Cir. 1976).

Although said District Judge testified that he could not recall what statement he had made to said patent attorney but categorically denied that he would have made such a statement, the Fifth Circuit vacated Brown's firearms conviction and held that **28 U.S.C. § 455 (a) & (b)**, requires ***"mandatory disqualification"*** of a judge ***"in any proceeding in which his impartiality might reasonably be questioned"*** or ***"where he has a personal bias or prejudice concerning the party."*** *See* ***United States v. Brown***, *supra* (539 F.2d 467) at 469-470.

B. The Seventh Circuit has ruled that the District Judge is not required to disclose his or her conflict of interest, bias and prejudice against a party and disqualify himself or herself under § 455 (a) & (b) but the party is required to discover the District Judge's conflict of interest, bias and prejudice, and move for his

or her recusal before the District Judge entered a decision against the party. Otherwise, the party waived the issue on appeal.

On page 2 of his Reply Brief in this instant case, Hoang specifically called the Seventh Circuit's attention to the Fifth Circuit's decision – in the ***United States v. Brown***, *supra* that if a judge has a conflict of interest or finds himself possessed of bias and prejudice, he should recuse himself or, if he does not, confront likelihood of proceedings under **28 U.S.C. § 455 (a) & (b)** to require him to do so – to reverse Chief Judge Lee's decision of dismissing this case with prejudice.

But, citing its own case law ***United States v. Ruzzano***, 247 F. 3d 688, 694 (7th Cir. 2001) that ***"holding a § 455(a) claim waived even though defendant discovered alleged grounds for recusal after being sentenced"*** to rule that Hoang waived this issue on appeal because he had failed to discover Judge Lee's conflicts of interest, bias and prejudice, and to move for his recusal until after Judge Lee dismissed the case, and that ***"our law is less clear as to whether Hoang can raise a claim of judicial bias under § 455(b) for the first time on appeal. See* United States v. Smith, 210 F. 3d 760, 764 (7th Cir. 2000)"**, the Seventh Circuit has affirmed Chief Judge Lee's decision because, as a result of Hoang's failure, ***"Judge Lee was not required to recuse himself"*** [43*]

Although Brown did not discover the grounds for recusal until six (6) years later, even after his conviction was affirmed by the Fifth Circuit, the Fifth Circuit did not rule that Brown had waived the issue on appeal. So the decisions of the Fifth Circuit and the Seventh Circuit are totally contradicting each other where the Fifth Circuit mandatorily requires the district judge to disclose his or her conflict of interest or bias and prejudice against a party and then disqualify himself or herself pursuant to **28 U.S.C. § 455(a) & (b)** while the Seventh Circuit rules that the district judge is not required to do so but the party is required to discover the district judge's conflict of interest, bias and prejudice and move for his or her recusal before the district judge made any decision against the party. Otherwise, the party would waive the issue on appeal.

43* See Appendix B at A-5.

C. The Court should review this instant case to decide which Circuit's decision is correct under 28 U.S.C. § 455(a) & (b).

The decision of the Fifth Circuit makes sense because the district judge knew or should have known his conflict of interest and his own feeling of bias and prejudice against any party better than anyone else, and is not allowed to hide his conflict of interest, bias and prejudice against any party. The decision of the Seventh Circuit does not make any sense because it is improbable that any party could waive the issue on appeal where the district judge's conflict of interest, bias and prejudice were not known nor were they disclosed to the party. *See* **§ 455(e).**

Such is the case in this instant case where Chief Judge Lee's conflicts of interest were not known nor were they disclosed to Hoang during the proceedings in the District Court. In fact, his conflicts of interest were well covered up but were discovered during the investigation for Brief of Appellant.[44*] And they are:

1. Two of the Defendants, R. Scott Perry and National Moving Systems, Inc., are represented by the law firm ***Hunt Suedhoff Kalamaros, LLP***, formerly ***Hunt, Suedhoff, Borror, Eilbacher & Lee***, where Chief Judge Lee was a partner and has still drawn a salary after leaving said law firm[45*] to become the U.S. District Judge, and now the Chief Judge.

2. He has also been a landlord of three apartment complexes for which his attorney, ***Haller & Colvin***, has appeared many times before Small Claims Court Magistrate Jerry L. Ummel who is one of the Defendants in this case.

44* The investigation has also revealed many unrelated kickbacks of Chief Judge Lee and his former law firm, notably the ***"White Oscar"*** case where a convicted drug kingpin, Daryl ***"White Oscar"*** McCleese who was represented by ***Tremper, Bechert, Leonard & Terrill,*** paid Chief Judge Lee's former law firm ***Hunt, Suedhoff, Borror & Eilbacher*** $100,000 for the minimum sentence instead of life in prison under Sentence Guidelines. After this kickback, Eilbacher opened his own law firm to represent such clients before Chief Judge Lee. In retaliation, Chief Judge Lee's former law firm, ***Hunt Suedhoff Kalamaros, LLP,*** has started to represent the parties appearing before Chief Judge Lee, such as in this instant case, despite the conflicts of interest. Unlike Chief Judge Lee, Eilbacher does not receive a salary from his former law firm. The reason why he does not is obvious.

45* See Appendix E at A-23, ¶4.

3. His attorney, ***Haller & Colvin,*** has also represented one of the Defendants, Sheriff James A. Herman, in this case.

4. When Chief Judge Lee was a partner, his law firm ***Hunt, Suedhoff, Borror, Eilbacher & Lee*** had represented Jamestown.

Chief Judge Lee's above interests had a total impact on the outcome of the case as he became so biased and prejudiced against Hoang, who was Asian-American, that he had strained to find everything wrong with this case to dismiss it with prejudice even on procedural grounds where his own former law firm failed to comply with **Rule 5(d)** of **FRCP** or where **Local Rule 8.1(a)** of his ***District Court for the Northern District of Indiana*** required him to assist the ***pro se*** plaintiff, such as Hoang, with the procedure instead of dismissing the case, let alone with prejudice.[46*]

Chief Judge Lee was so protective of his former law firm's client, National Moving Systems, that he even stated its side of the story in his order to dismiss this case with prejudice and then deceitfully referred it to ¶ 18 of Hoang's Amended Complaint as if that was Hoang's story in the Amended Complaint.[47*] Since there was no hearing in the District Court where National Moving Systems could tell its story, Chief Judge Lee must have picked up its story when he went to his former law firm to pick up his "salary" (or kickback?).[48*] As a result, Hoang has not seen any of his approximately $250,000 worth of personal property since May 8, 2001 when they illegally seized it without due process or a state court order as required by **IC 32-7-6-1.**

After Chief Judge Lee's conflicts of interest were discovered, his former law firm, by Michael Mustard who is one of the defense counsel, refused to discuss the extent of said conflicts of interest. Every time he went to the court, Hoang was harassed, intimidated and humiliated by Chief Judge Lee's bailiffs or

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46* The Seventh Circuit did not affirm Judge Lee's dismissal of the case on procedural grounds but ***Rooker-Feldman*** doctrine and ***judicial immunity.***

47* See Appendix D at A-10, ¶ 2, n. 17 where Chief Judge Lee protectively stated that N.M.S. misinterpreted Hoang's request and warned that they would seek to have him arrested if he did not leave the premises. Please compare it to ¶ 18 of Hoang's Amended Complaint or P. 13, ¶ 4 of this Petition where Hoang specified that N.M.S. claimed Hoang's personal property as theirs and paged Officer Hosford there to arrest Hoang as planned.

48* See Appendix E at A-23, ¶ 4.

deputy marshals. And, on October 12, 2001, five (5) of eleven (11) defense counsel led by Chief Judge Lee's former law partner, Thomas Ewing of his former law firm filed with the Seventh Circuit a ***"Joint Motion to Dismiss, or, in the Alternative, Strike Appellant's Brief"*** in which they requested the Seventh Circuit, on P. 3 & 4, ¶ 6, to strike six (6) appendices including the article about Chief Judge Lee's salary (or kickbacks?) from his former law firm and his real estate investment [48*] (on preceding page) from ***"the Appellant's Brief as they are irrelevant, improperly relied upon and having no bearing on the issues before this Court".***

The Seventh Circuit did not even rule on their joint motion. So, on December 13, 2001, Chief Judge Lee himself called one of three assigned Circuit Judges to explain his side of the ***"conflicts of interest".***[49*] And so, on the next day of Friday, December 14, 2000, this case was immediately submitted to said three Circuit Judges who hastily affirmed Chief Judge Lee's decision on the following working day of Monday, December 17, 2001.[50*]

As a result, this case is now pending before this court for the Court to review and decide which Circuit's decision is correct under **28 U.S.C. § 455(a) & (b)** where the mandatory requirements for district judge's disclosure and recusal are concerned.

II. REVIEW IS WARRANTED BECAUSE THE DECISION OF THE SEVENTH CIRCUIT EXCEEDS THE MANDATE OF THE COURT IN THE *ROOKER-FELDMAN* DOCTRINE WHERE THE SEIZURE AND REMOVAL OF PERSONAL PROPERTY WITHOUT DUE PROCESS OR A STATE COURT ORDER AS REQUIRED BY STATE LAW (IC 32-7-6-1) ARE CONCERNED.

A. The Seventh Circuit failed to consider that the seizure and removal of Hoang's personal property of approximately $250,000 is distinct or happened independently from the state eviction order.

The Seventh Circuit has held in this instant case that:

> ***... Hoang's federal complaint essentially asked the district court to review the state magistrate's judgment, and***

49* According to the Seventh Circuit's Deputy Clerk, who was ordered to submit the complete file to said three-Circuit-Judge panel forthwith.

50* See Appendix B at A-2 (Right below the Seventh Circuit's caption).

> ***his alleged injury directly results from that judgment. Moreover, Hoang's claims are inextricably intertwined with the state court judgment; if the state proceedings had gone in his favor, the injuries he alleged here would not have occurred.*** **See Long, 182 F.3d at 556.** ***Accordingly, the district court properly dismissed Hoang's complaint for lack of subject matter jurisdiction based on the*** **Rooker-Feldman** ***doctrine.*** (See Appendix B at A-4, ¶ 2)

If the Seventh Circuit had not hastily affirmed Chief Judge Lee's decision but had taken the time to read Hoang's Briefs and study the issues, it would have been aware that **IC 32-7-6-1** required Jamestown and PGPM to do the following steps **after** obtaining the state eviction order from Magistrate Ummel:

> ***(a) If a landlord is awarded possession of a dwelling unit by a [state] court under IC 32-6-1.5, the landlord may seek an order from the [state] court allowing removal of a tenant's personal property.***
>
> ***(b) If the tenant fails to remove the tenant's personal property before the date specified in the [state] court's order issued under subsection (a) the landlord may remove the tenant personal property in accordance with the order and deliver the personal property to a warehouseman under section 2 [IC 32-7-6-2] of this chapter.***

If Jamestown and PGPM had complied with subsection **(a)** by seeking a state court order which allowed their removal of Hoang's personal property, Magistrate Ummel would have to have given Hoang time to remove his personal property pursuant to subsection **(b)** before they could seize and remove his personal property. If that was the case, Hoang's injuries of losing $250,000 worth of personal property would not have occurred. So the Seventh Circuit's logic that "if the state proceedings had gone in his favor, the injuries he alleged here would not have occurred" is wrong because of **IC 32-7-6-1** and the lack of a state court order, allowing them to seize and remove Hoang's personal property.

The Seventh Circuit is also wrong that Hoang's claims are inextricably intertwined with state court judgment because there is no state court judgment awarding them Hoang's personal property with which to inextricably intertwine. Therefore, the ***Rooker-Feldman*** doctrine from the Court's decisions of ***Rooker v. Fidelity***

Trust Co., 263 U.S. 413, 415-416, 44 S.Ct. 149, 68 L.Ed. 362 (1923) and ***District of Columbia Court of Appeals v. Feldman,*** 460 U.S. 462, 482-486, 103 S.Ct. 1303 does not apply.

In his Brief, Hoang not only called the Seventh Circuit's attention to the fact that their seizure and removal of Hoang's personal property is distinct or happened independently from the state eviction order but also quoted what Magistrate Ummel stated that ***"is a separate issue"***, [51*] not related to the eviction order by appending an affidavit of his attorney to the Brief.[52*] Hoang also cited the Seventh Circuit's own case law, ***Nesses v. Shepard***, 68 F.3d 1003 (7th Cir. 1995), that held the ***Rooker-Feldman*** doctrine does not apply in this situation where the damages from seizing and removing Hoang's personal property without a state court's order as required by **IC 32-7-6-1** is distinct or happened independently from the state eviction order. But Chief Judge Lee's phone call had such an impact on the outcome of the case that the Seventh Circuit had affirmed the District Court's decision of dismissing this case on the next working day after submission.

That would raise another question (and since the state appellate court is reviewing only issues related to the eviction order as there is no state court order allowing their seizure and removal of Hoang's personal property under **IC 32-7-6-1**) which is how could Hoang get his $250,000 worth of personal property back or the damages thereof if he is not allowed to pursue a **§ 1983** claim against them for failure to comply with **IC 32-7-6-1** before seizing and removing his personal property?

The Court should, therefore, review this instant case to decide the limit of ***Rooker-Feldman*** doctrine where the damages are distinct or happened independently from the state court judgment.

B. <u>The Seventh Circuit failed to consider the requirement of 42 U.S.C. § 1987 for prosecution of violation of certain laws, and the *Rooker-Feldman* doctrine does not apply to injunctive relief.</u>

The requested injunctive relief (a) and (b) [53*] of this instant case are not only not barred by the ***Rooker-Feldman*** doctrine but

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51* See Appendix I at A-31, last ¶.

52* See Appendix H at A-28, ¶ ¶ 6 & 7.

53* See P. 17 of this Petition, or R.O.P., Doc. 9, P. 6 & 7.

also warranted by **42 U.S.C. § 1987** as the District Judge and other officers of the court are mandatorily required by **§ 1987** to institute prosecutions of violations of certain laws as follows:

> ***The district attorneys [United States Attorneys], marshals, and deputy marshals, the commissioners [magistrate judges] appointed by the circuit [district] and territorial courts, with power to arrest, imprison, or bail offenders, and every other officer who is especially empowered by the President, are authorized and required, at the expense of the United States, to institute prosecutions against all persons violating any of the provisions of chapter seven of the Title "CRIMES," and to cause such persons to be arrested, and imprisoned or bailed, for trial before the court of the United States or the territorial court having cognizance of the offense.*** **(R.S. § 1982.)**

Due to his salary from his former law firm [54*] which represents two Defendants in this case along with his real estate investment's law firm [54*] which represents another Defendant, Chief Judge Lee refused to comply with **§ 1987** by not instituting any prosecution against the Defendants for violating **18 U.S.C. § § 241 & 242**. Although there is enough evidence to indict and convict every one of them pursuant to **§ § 241 & 242**, the Seventh Circuit failed to decide this important issue. The evidence is including but not limited to the following: [55*]

- The evidence of Perry's approaching Magistrate Ummel before the trial under a pretext of borrowing a file for a ***nonjudicial agreement*** to deprive Hoang of his civil rights by evicting him from his cooperative housing unit (despite ***Cunningham*** and the lack of jurisdiction). This was overheard by a witness whose account was collaborated by circumstantial evidence and inference from Perry's own admission that ***"he did deliver the file"*** back to magistrate Ummel at the bench after their ***ex parte*** meeting.

- The evidence of their seizing and removing Hoang's personal property without due process or state court order under **IC 32-7-6-1**, and their denial of possessing said property thereafter.

54* See Appendix E at A-23.

55* See detail with reference/evidence in Statement of the case, P. 5-18.

- The evidence of their obstructions of justice as defined by **42 U.S. C. § 1985(2)** by chasing after Hoang and arresting him after he served federal complaint and summons on them, and by threatening to kill him after he served federal amended complaint and summons on Hosford and Feichter.

- The evidence of their obstructions of justice by tampering with Hoang's state notice of counterclaim by crossing out his word ***"counter"*** and writing their word ***"3rd party"*** on top of it to deceive the Indiana Court of Appeals through a state court order as that was what Hoang filed in state small claims court.

The Court should, therefore, review this instant case to reiterate the scope of ***Rooker-Feldman*** doctrine where injunctive relief is concerned.

III. REVIEW IS WARRANTED BECAUSE THE DECISION OF THE SEVENTH CIRCUIT CONFLICTS WITH THE DECISIONS OF THE COURT AND THE NINTH CIRCUIT ON THE ISSUE OF JUDICIAL IMMUNITY.

A. <u>The Seventh Circuit failed to apply the Court's rulings that judicial immunity is lost when a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statute or case law expressly depriving him of jurisdiction into this instant case</u>.

On page 27 of the Brief of Appellant, Hoang called the Seventh Circuit's attention to the Court's ruling on ***Bradley v. Fisher***, 80 U.S. (13 wall.) 335, 351, 20 L.Ed. 646 (1872) that judicial immunity is lost when a judge **(1)** knows that he lacks jurisdiction, or **(2)** acts in the face of a clearly valid statute or case law expressly depriving him of jurisdiction, specifically as follows:

(1) Magistrate Ummel knew that he lacked jurisdiction when he issued an order to evict Hoang (as if Hoang was a tenant) instead of directing proceedings for the sale of member's or Hoang's vested interest. At the hearing on motion to correct errors, Magistrate Ummel revealed his knowledge of the mandatory requirement of ***Cunningham***, *inter alia*, as follows:

> ***... [O]ne main point is [sic] of course, is the distinction from a pure lease is [sic] that this Jamestown Homes, Inc. agreement entails, of course, as is always the case in Small Claims, the issue was never raised at trial. However, you know by the rules, your client is protected because***

defenses are preserved in Small Claims and he doesn't need to raise any of those issues, such as the* Cunningham *case or that type of situation to be protected. [56*]

But, in the order to deny Motion to Correct Errors, Magistrate Ummel still refused to comply with ***Cunningham*** by not vacating his eviction order (as if Hoang was a tenant) and directing proceedings for the sale of Hoang's vested interest instead. Indiana Supreme Court held that a judge who fails to follow statutory requirement or precedent case fails to respect the law in violation of ***Canon 2***, and a suspension without paid is justified. *See* ***In re Boles***, 555 N.E.2d 1284 (Ind. 1990).

(2) Magistrate Ummel also acted in the face of clearly valid statute and case law expressly depriving him of jurisdiction: **IC 33-5-2-4(b)(2)** limits his subject matter jurisdiction to "landlord and tenant" with a maximum jurisdictional amount as follows:

Possessory actions between landlord and tenant in which the rent was due at the time the action is filed does not exceed six thousand dollars ($6,000).

Cunningham specified at *627* that member (such as Hoang) is not a tenant, and ejectment action against a member is not simply a possessory matter but rather a more complex matter contemplating a resolution of ownership interest member has in the cooperative. Magistrate Ummel, therefore, did not have subject matter jurisdiction either way even though he tried (in his order to deny Motion to Correct Errors) to illegally deflate Hoang's $97,528 vested interest in the cooperative to $5,986, which is within his jurisdictional limit, by illegally changing the date that Hoang purchased the membership and signed the original occupancy agreement from August 10, 1976 to January of 2000.

But, citing its ***Newman v. Indiana***, 129 F. 3d 937, 941 (7th Cir. 1997) instead of the Court's decision in ***Bradley v. Fisher***, *supra*, or ***Stump v. Sparkman***, 435 U.S. 349, 360 (1978), the Seventh Circuit erroneously noted on footnote 1 of its decision that the district court was correct in asserting that the state magistrate had absolute immunity. [57*] The Seventh Circuit's decision also is in conflict with the Ninth Circuit's decision as follows:

56* See Appendix I at A-31.

57* See footnote 1 in the Appendix B at A-4.

B. <u>The Seventh Circuit's decision also conflicts with the Ninth Circuit's decision where the *nonjudicial* agreement is concerned</u>.

The Ninth Circuit held in ***Rankin v. Howard***, 633 F.2d 844, 847 (9th Cir.1980), ***Cert. denied,*** 451 U.S. 939, 68 L.Ed 2d 326, 101 S.Ct. 2020 (1981), regarding the ***nonjudicial*** agreement, *inter alia,* as follows:

> ***Rankin alleged that Judge Zeller agreed in advance with the other to rule favorably on the petition. We conclude that a judge's private, prior agreement to decide in favor of one party is not a judicial act. See also*** **Lopez v. Vanderwater, 620 F.2d 1229, 1235-37 (7th Cir. 1980)** ***(Judge not immune for "prosecutorial" acts prior to biased decision). If the alleged agreement manifests Judge Zeller's participation in a conspiracy, then proof of the agreement could form the basis of liability whether or not he is immune from liability for subsequent judicial acts.***

In this instant case, Magistrate Ummel promised them ***secretly*** before the trial that he did not have any problem with finding ***"some ground"*** to evict Hoang and that ***"consider it done, I'll evict him."*** [58*] Magistrate Ummel latter did evict Hoang as if Hoang was a tenant despite ***Cunningham*** and his lack of jurisdiction.

But, because of his interest in the outcome of this case, Chief Judge Lee ruled that Magistrate Ummel had absolute immunity anyway, and the Seventh Circuit concurred with him.

Since the Court denied Judge Zeller's petition for a writ of certiorari in favor of Rankin, the Court should, therefore, review this instant case to address said new issue of ***nonjudicial*** agreement, and to reiterate its decision in ***Bradley v. Fisher***, *supra.*

IV. REVIEW IS WARRANTED BECAUSE THE SEVENTH CIRCUIT'S DECISION CONFLICTS WITH THE COURT'S DECISION ON THE ISSUE OF QUALIFIED IMMUNITY.

On footnote 1 of its decision, the Seventh Circuit also stated briefly that the law-enforcement officers had qualified immunity for their actions in ***"enforcing the ejectment order"*** pursuant to its ***Homola v. Mc.Namara***, 59 F.3d 647, 651 (7th Cir. 1995). If the Seventh Circuit meant ***"enforcing the ejectment order"*** by serving

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58* See detail on pages 8 & 9 with reference to Appendix F at A-24 & 25.

the eviction order on Hoang and waiting for the next state court order to remove Hoang's personal property pursuant to **IC 32-7-6-1** then Sheriff James Herman is entitled to qualified immunity. But that's not what his deputies did.

His deputies broke open Hoang's back door. They pointed their guns at Hoang and ordered him to lie face down on the floor while they broke his furniture and searched his house for something illegal to arrest him. After finding nothing illegal, they literally threw him out of his house and helped themselves with three (3) boxes of his personal property, and then brought in the employees of PGPM and National Moving Systems to loot the rest of his approximately $250,000.00 personal property. The Court held in ***Malley v. Briggs***, 475 U.S. 335, 341, 106 S.Ct. 1092, 89 L.Ed. 2d 271 (1986) that such actions are not ministerial acts but clearly violations of established law, e.g., **§ 1983**. The sheriff is, therefore, not entitled to qualified immunity. [59*]

CONCLUSION

For the foregoing reasons, the writ of certiorari should be granted. [60*]

RESPECTFULLY REQUESTED,

LIEU B. HOANG, DLD
5116 Holly Oak Road
Fort Wayne, IN 46845-9449
(260) 484-1793
PRO SE PETITIONER

59* By the way, Sheriff Herman did not seek dismissal of the cause on qualified immunity but quasi-judicial immunity. Police Chief Russel York did not seek dismissal of the cause on any kind of immunity but procedural grounds. The Seventh Circuit did not affirm the District Court's decision of dismissing the cause on any procedural ground even on its footnote 1.

60* Since Indiana Appellate Court is reviewing only issues related to the eviction order because there is no state court order allowing the seizure and removal of Hoang's personal property under **IC 32-7-6-1**, Hoang has no objection if the Court continues this matter until the state appeal is exhausted.

No. _____

In The

Supreme Court of the United States

LIEU B. HOANG,
Petitioner,
vs.

JERRY L. UMMEL, Magistrate
Allen Superior Court – Small Claims Division,
JAMES A. HERMAN, Sheriff
Allen County Sheriff's Department,
RUSSEL P. YORK, Chief
Fort Wayne Police Department,
PGPM, Inc., JAMESTOWN HOMES, Inc.,
R. SCOTT PERRY, RANDALL L. HOSFORD,
and NATIONAL MOVING SYSTEMS, Inc.,
Respondents.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Seventh Circuit

APPENDIX

LIEU B. HOANG, LLD
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5116 Holly Oak Road
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BEST AVAILABLE COPY

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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

JUDGMENT – WITHOUT ORAL ARGUMENT

Date: December 17, 2001

BEFORE: Honorable JOHN L. COFFEY, Circuit Judge
Honorable MICHAEL S. KANNE, Circuit Judge
Honorable DIANE P. WOOD, Circuit Judge

No. 01-3039

LIEU B. HOANG,
Plaintiff-Appellant

v.

JERRY L. UMMEL, Referee, Magistrate of Allen Superior Court, JAMES HERMAN, Sheriff, PGPM, Incorporated, et al.,
Defendants-Appellees

Appeal from the United States District Court for the Northern District of Indiana, Fort Wayne Division
No. 01 C 184, William C. Lee, Chief Judge

The judgment of the District Court is AFFIRMED, with costs, in accordance with the decision of this court entered on this date.

(1060-110393)

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted December 14, 2001*
Decided December 17, 2001

Before

Hon. JOHN L. COFFEY, Circuit Judge

Hon. MICHAEL S. KANNE, Circuit Judge

Hon. DIANE P. WOOD, Circuit Judge

No. 01-3039

LIEU B. HOANG,
Plaintiff-Appellant,

v.

JERRY L. UMMEL, et al.,
Defendants-Appellees,

Appeal from the United States District Court for the Northern District of Indiana, Fort Wayne Division

No. 1:01-CV-184

William C. Lee,
Chief Judge.

ORDER

After losing a state court ejectment proceeding, Lieu Hoang filed a civil rights complaint in federal court against the state court magistrate, state law-enforcement officers, the housing complex from which he was ejected and its managing agency, and a moving company hired to remove his property. The district court dismissed Hoang's complaint for lack of subject matter jurisdiction based on the *Rooker-Feldman* doctrine. Hoang appeals, and we affirm.

* After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. *See* Fed. R. App. P. 34(a)(2).

Since 1976 Hoang has owned a membership in a cooperative housing corporation known as Jamestown Homes, Inc. In March 2001, Hoang refused to allow Jamestown's maintenance supervisor to inspect his home because, he suspected, Jamestown employees had stolen his property on previous occasions. After this incident the managing agency of Jamestown Homes, PGPM, Inc., filed a complaint for possession against Hoang in state court. In the complaint PGPM alleged that Hoang failed to comply with a provision in the Occupancy Agreement, signed by Hoang in 2000, that required Hoang to allow Jamestown to inspect his property. After a hearing on April 23, the state magistrate entered judgment for PGPM and issued an order directing Hoang to vacate the premises within seven days. Hoang refused to vacate the premises, and instead filed a motion to correct errors in state court. PGPM then filed a writ of restitution to enforce the order to vacate the property. Five days later sheriffs, acting pursuant to a court order, ejected Hoang and began removing his property with the aid of a moving company, National Moving Systems, Inc. Hoang returned that same day to the state magistrate and filed a motion to stay ejectment until his motion to correct errors could be heard, but the motion to stay was denied.

Later that same day, Hoang also filed a four-line complaint in federal court along with an "Emergency Motion for an order to Stay the State Court's Eviction Order"; the motion was denied several hours later. On May 25, Hoang amended his complaint to allege a variety of constitutional violations. The complaint recited the circumstances leading up to and including the state proceedings, and alleged among other things a conspiracy to arrest him and steal his property "since the eviction order is illegal." The district court dismissed the complaint for lack of subject matter jurisdiction based on the *Rooker-Feldman* doctrine. We review de novo district court dismissals for lack of subject matter jurisdiction. See *Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 554 (7th Cir. 1999).

The *Rooker-Feldman* doctrine bars parties from challenging state court decisions in federal district or circuit courts. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Durgins v.*

City of East St. Louis, Nos. 00-3271 & 00-3468, 2001 WL 1443286, at *3 (7th Cir. Nov. 16, 2001). Parties must instead pursue relief through the state appellate system and, if still aggrieved, seek certiorari from the Supreme Court. *See Durgins,* 2001 WL 1443286, at *3. The doctrine applies when the plaintiff's alleged injury arises from the state court's judgment itself. *See id.* Moreover, the doctrine applies not only to the claims raised in state court but also to any claims inextricably intertwined with those claims. *See Manley v. City of Chicago,* 236 F.3d 392, 396 (7th Cir. 2001). In other words, parties cannot avoid the doctrine's application by cloaking complaints challenging state court decisions in federal civil-rights language. *See id.* at 397-98.

This is what Hoang attempts to do here. Hoang's federal complaint essentially asked the district court to review the state magistrate's judgment, and his alleged injury directly results from that judgment. Moreover, Hoang's claims are inextricably intertwined with the state court judgment; if the state proceedings had gone in his favor, the injuries he alleged here would not have occurred. *See Long,* 182 F.3d at 556. Accordingly, the district court properly dismissed Hoang's complaint for lack of subject matter jurisdiction based on the *Rooker-Feldman* doctrine.[1]

Hoang also argues that Judge Lee should have recused himself under 28 U.S.C. § 455 because (1) the judge's former law firm represented two of the defendants and (2) a law firm that had represented one of the judge's property investments appeared in previous matters before the state magistrate named as a defendant in this case. A federal judge must disqualify himself "in any proceedings in which his impartiality might reasonably be questioned, " 28 U.S.C. § 455(a), or "a lawyer with whom he previously practiced law served during such asso ciation as a lawyer concerning the matter," 28 U.S.C. § 455

[1] While we affirm the district court's dismissal of the entire complaint based on the *Rooker-Feldman* doctrine, we note that the district court was also correct in asserting that the state magistrate had absolute immunity from suit, see *Newman v. Indiana,* 129 F.3d 937, 941 (7th Cir. 1997), and that the law-enforcement officers had qualified immunity for their actions in enforcing the ejectment order, see *Homola v. McNamara,* 59 F.3d 647, 651 (7th Cir. 1995).

(b)(2). To the extent Hoang's argument falls under § 455(a), he waived it because he failed to move for recusal until after the district court dismissed the case. See *United States v. Ruzzano,* 247 F.3d 688, 694 (7th Cir. 2001) (holding a § 455(a) claim waived even though defendant discovered alleged grounds for recusal after being sentenced). While we do not preclude the possibility that "exceptional circumstances" might excuse a failure to timely seek recusal, Hoang has not demonstrated such circumstances. *See id.* In any event, there is no evidence in the record that the alleged grounds for recusal had any effect on Hoang's case or affected his substantial rights in any way. *See United States v. Troxell,* 887 F.2d 830, 833 (7th Cir. 1989).

Our law is less clear as to whether Hoang can raise a claim of judicial bias under § 455(b) for the first time on appeal. *See United States v. Smith,* 210 F.3d 760, 764 (7th Cir. 2000). We need not resolve the issue, however, because Judge Lee was not required to recuse himself. Unlike § 455(a), S455(b) requires an actual interest or bias on the part of the judge. *See Ruzzano,* 247 F.3d at 696 (discussing § 455(b)(3). Section 455(b)(2) mandates recusal only where a member of the judge's former law firm worked on the matter while the judge was with the firm. See § 455(b)(2); *Veneklase v. City of Fargo,* 236 F.3d 899, 901 (8th Cir. 2000). This did not occur here, and Hoang offers no evidence of any actual interest or bias.

Finally, Hoang argues that some of the defendants failed to comply with the notice requirements *lewis v. faulkner,* 689 F.2d 100 (7th Cir. 1982). Lewis requires that pro se prisoner litigants in a civil case receive notice of the consequences of failing to respond to a motion for summary judgment. *See id.* at 102. These requirements, however, generally do not apply to motions to dismiss. See *Curtis v. Bembeck,* 48 F.3d 281, 288 (7th Cir. 1995); *cf. Lewis,* 689 F.2d at 102 (explaining that the requirements apply when affidavits are submitted along with motions to dismiss). In any event, the district court provided Hoang with notice explaining the procedures and consequences of the motions, and Hoang responded to all of the motions.

Accordingly, the judgment of the district court is AFFIRMED.

United States District Court

Northern District of Indiana

LIEU B. HOANG,

Plaintiff,

v.

JERRY L. UMMEL, JAMES HERMAN, PGPM, INC., JAMES-TOWN HOMES, INC., SCOTT R. PERRY, RUSSELL P. YORK, RANDALL HOSFORD, and NATIONAL MOVING SYSTEMS,

Defendants.

JUDGMENT IN A CIVIL CASE

Case No. 1:01-CV-184

[ ] **Jury Verdict.** This action came before the court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[x] **Decision by Court.** This action came to consideration before the court. The issues have been determined and a decision has been rendered.

IT IS ORDERED AND ADJUDGED judgement is entered for the for the Defendants Jerry L. Ummel, James Herman, PGPM, Inc., Jamestown Homes, Inc., Scott R. [sic] Perry, Russell [sic] P. York, Randall Hosford, and National Moving Systems and against the Plaintiff Lieu B. Hoang.

Stephen R. Ludwig, Clerk

By *s/ Patricia E. Jones*
Deputy Clerk

Equivalent Coupon Issue Yield: 3.60%

This document entered pursuant to Rules 79(a) and 58 of the Federal Rules of Civil Procedure on **July 30, 2001.**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

LIEU B. HOANG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL NO. 1:01-CV-184
	)	
JERRY L. UMMEL, et al.,	)	
	)	
Defendants.	)	

ORDER

This matter is before the court on several motions to dismiss filed by various defendants in this action. The plaintiff, Lieu B. Hoang ("Hoang"), responded to the motions, and the motions became ripe for review on July 13, 2001. For the following reasons, the defendants' motion to dismiss will be granted.

Discussion

On May 8, 2001, Hoang filed a cryptic four-line complaint against Jerry L. Ummel, Magistrate, Allen Superior Court, Small Claims Division; James Herman, Allen County Sheriff; PGPM, Inc.; Jamestown Homes, Inc.; and R. Scott Perry. Hoang also filed on this same date a "(Temporary) Motion to Stay the State Court's Order" in which he "respectfully moves the Court to issue an order to stay state court's order or possession until further order of this court." Later on this same date, Hoang filed an "Emergency Motion for An Order to Stay State Court's Eviction Order" in which he asked "the Court to consider his motion for an order to stay state court's eviction order filed this morning as a critical emergency and to rule on it as soon as possible because his life and property depend on it."

On May 8, 2001, this court entered an order denying Hoang's motion because, under even the most liberal standard Hoang's

complaint stated no claim upon which relief could be granted. The Court further noted that to the extent Hoang was attempting to overturn or stop a state court eviction proceeding, the Rooker-Feldman doctrine would bar Hoang's request.

On May 25, 2001, Hoang filed an amended complaint. This amended complaint adds three additional defendants: Russel P. York, Fort Wayne Police Chief; Randall Hosford, Fort Wayne Police Officer; and National Moving Systems. Hoang has titled his amended complaint as a: "Complaint for Damages from Conspiracy to Deny Constitutional Rights to Equal Protect [sic] Under the Law, to Due Process, Conspiracy to Violate Constitution [sic] Rights, and Conspiracy to Converse [sic] Property and to Arrest."

Hoang's amended complaint states that on August 10, 1976 he and his mother bought the ownership of the membership with a cooperative housing corporation known as Jamestown Homes, Inc.[1] Sometime in early 2000, Hoang notice that some of his now-deceased mother's property was missing and that also at least $5,000 in cash was missing. Hoang suspected that the employees of PGPM, Inc ("PGPM"), the management company for Jamestown Homes, had been stealing his property as they had the key of his housing unit.[2] Hoang thus changed the lock, but received letters from PGPM threatening to evict Hoang if he did not allow maintenance personnel access to his housing unit.[3] Hoang supplied PGPM with a key to his housing unit, but placed all of his valuable personal property into locked rooms.[4]

On March 30, 2001, the maintenance supervisor, Fred Gould, entered Hoang's housing unit, but was unable to enter the two locked rooms. Thus, on April 4, 2001, R. Scott Perry, an attorney for Jamestown Homes, filed a complaint for ejectment in the Small Claims Division of the Allen Superior Court.[5] Apparently the complaint for ejectment was based on Hoang's agreement with Jamestown Homes in which Hoang was required to

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[1] Amended Complaint, ¶ 1.
[2] Id. at ¶ 2.
[3] Id. at ¶ 3.
[4] Id. at ¶ 4.
[5] Id. at ¶ 5.

permit all of the premises to be inspected upon reasonable demand. On April 13, 2001, Hoang filed a counterclaim for damaged property that allegedly resulted from Jamestown Homes' failure to repair the roof, and also to recover his missing property.[6] Hoang alleges that on April 18, 2001, Perry called Hoang and informed him that he would ask Magistrate Ummel to hear Hoang's counterclaim separately, and not as part of the hearing on the complaint for ejectment set for April 20, 2001.[7] According to Hoang, on April 20, 2001, Hoang saw Perry take a file from Magistrate Ummel at the Clerk's counter where they had a short conversation. When court was in section, Perry returned the file to Magistrate Ummel.[8] Hoang then requested a court reporter, which request was granted. Evidence was presented by both sides with respect to the complaint for ejectment, but Hoang was not permitted to present evidence relating to his counterclaim.[9] At the conclusion of the hearing, Magistrate Ummel held that Hoang had violated Article XVI of the Occupancy Agreement and, on April 23, 2001, issued an order directing Hoang to vacate the premises within seven days.[10]

On May 1, 2001, Hoang filed a Motion to Correct Errors, which motion was set for hearing on May 9, 2001.[11] On May 3, 2001, an employee of Jamestown Homes, Kelly Knowland, filed a request for a writ of restitution, and on May 7, 2001, Perry filed a Motion for Continuance of the May 9, 2001 hearing.[12]

On the morning of May 8, 2001, members of the Allen County Sheriff's department broke Hoang's back door, ordered him to lie down on the floor while they searched the entire house, then threw Hoang out of his housing unit and warned him that he would be arrested for trespassing if he returned to the housing unit.[13] Hoang immediately went to the Small Claims Division of the Allen Superior Court asking for an emergency

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[6] Id. at ¶ 6.
[7] Id. at ¶ 7.
[8] Id. at ¶ 8.
[9] Id. at ¶¶ 9, 10.
[10] Id. at ¶ 11.
[11] Id. at ¶ 12.
[12] Id. at ¶ 13.
[13] Id. at ¶ 14.

hearing to stay the eviction order until after the Motion to Correct Errors had been ruled upon.[14] Magistrate Ummel indicated that he could not stop the eviction order because Hoang has failed to file a Motion to Stay. The Motion to Correct Errors was reset for a hearing on May 29, 2001.[15] Hoang then rushed to this court and filed his four-line complaint and "Emergency Motion for an Order to Stay State Court's Eviction Order", which motion was denied a few hours later.[16]

Hoang was informed that his personal property was being moved to National Moving Systems. Hoang thus went to National Moving Systems' office and requested them to transport his personal property to another location. National Moving interpreted Hoang's request as a threat, and warned Hoang that they would seek to have him arrested if he did not leave the premises.[17] Hoang left National Moving's premises, drove to nearby gas station, and called 911 seeking to have the police retrieve his property from National Moving. Fort Wayne Police Officers responded and allegedly told Hoang to return to his housing unit at Jamestown Homes and they would tell National Moving to stop moving Hoang's personal property.[18] Hoang alleges that a Fort Wayne Police Officer spoke with Gould after they arrived at Jamestown Homes, but Gould refused to stop moving Hoang's personal property out of his housing unit. Additional officers arrived at the scene and Hoang was arrested for trespassing.[19] Hoang alleges that the police officers and Gould were involved in a conspiracy to "arrest Hoang that day for something to steal his personal property since the eviction order is illegal..."[20]

Hoang concludes his amended complaint with a prayer for relief which states as follows (grammar retained as in the original):

> (a) Direct local law enforcement, resident FBI agents and the United States Attorney's Office to con-

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[14] Id. at ¶ 15.
[15] Id. at ¶ 16.
[16] Id. at ¶ 17.
[17] Id. at ¶ 18.
[18] Id. at ¶ 20.
[19] Id. at ¶ 21.
[20] Id. at ¶ 22.

duct appropriate investigations and prosecutions to bring those criminal conspirators to justice.

(b) Direct the U.S. Urban and Housing Development to review and terminate the contract with PGPM, Inc. concerning Jamestown Homes, Inc.

(c) Direct the return of Plaintiff's housing unit at 1682 Hobson Rd pursuant to ***Cunningham v. Georgetown Homes, Inc.*** or the sale of his vested interest in the amount of $97,528.65 which is the combination of all carrying charges he has paid since August 1976 as his share for the mortgage, maintenance and taxes on the property, indemnity deposit and subscription price at the current market value plus interests to insure that his rights are adequately protected.

(d) Direct the return of Plaintiff's personal property of approximately $250,000 especially his mother's gold and jewelry, that have been passed on for many generations, which are not replaceable, and damages, if any, and:

(e) Punitive damages.

All of the Defendants have filed motions to dismiss and the court will address each motion in turn.

Magistrate Jerry L. Ummel's Motion to Dismiss

Magistrate Ummel based his motion on Rule 12(b)(6) of the Federal Rules of Civil Procedure and alleges that Hoang's complaint fails to state a claim upon which relief can be granted. Ummel first argues that the Rooker-Feldman doctrine requires this court to abstain from deciding the issues raised by Hoang. The Rooker-Feldman prohibits federal district courts from reviewing state court civil judgments, including all claims that are inextricably intertwined with those judgments. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). The Rooker-Feldman bar operates even when the plaintiff fails to raise his federal claims in state court. Staley v. Ledbetter, 378 F.2d 1016, 1018 (11th Cir. 1988); see also Homola v. McNamara, 59 F.3d

647, 649 (7th Cir. 1995); GASH Associates v. Village of Rosemont, 995 F.2d 726, 728 (7th Cir. 1993).

Magistrate Ummel contends that Hoang is clearly asking this court to review the action of the state court that issued the eviction order, and thus his claim is barred by Rooker-Feldman. Hoang's response with respect to the Rooker-Feldman doctrine is a bit incoherent, and it is as follows:

> There is no relevancy between Rooker-Feldman cases and this instant case where Hoang is suing Ummel and his co-conspirators under ***Sections 1981, 1982, 1983*** and ***1987*** of ***42 U.S.C.*** § [sic] to bring them to justice and to recover the damages from their conspiracy to violate his civil rights by denying him the equal protection under the laws and due process, by conversing [sic] his property and by arresting him to cover up their conspiracy Hoang doesn't ask the court to do the job of the appellate court by reversing Ummel's eviction order but to exhibit it as the evidence of the end result – which is illegal under ***Cunningham v. Georgetown Homes, Inc., supra*** – of their conspiracy against him. Accordingly, the Rooker-Feldman doctrine cannot possibly be invoked in this instant case.

(Hoang's Response filed June 12, 2001 at 5-6, emphasis on original). After Magistrate Ummel filed a second motion to dismiss directed to Hoang's amended complaint, Hoang submitted an additional response, which states in pertinent part:

> Hoang has never requested the Court to reverse Ummel's eviction order in his Complaint or Amended Complaint because that is the job for the Court of Appeals of Indiana. He did, however, call the Court's attention to Ummel's eviction order because it is not only the end result of their conspiracy but also illegal under ***Cunningham v. Georgetown Homes, Inc.,*** supra. Not many judges or magistrates would **openly** do something illegal like that. But Ummel did because he was convinced by Perry that, since Hoang was an Asian who had no lawyer, there was no danger of getting caught.

* * *

> The Rooker-Feldman doctrine from ***Rooker v. Fidelity Trust Co.,*** 263 U.S. 413 (1923) and ***District of Columbia Court of Appeals v. Feldman,*** 460 U.S. 462 (1983) is **not** designed to protect people like Ummel and his co-conspirators from liability under ***Rankin v. Howard, supra*** but to refrain the District Court from reversing or modifying the judgment of state court that was affirmed by the state court of appeals and/or the state supreme court. Accordingly, the Rooker-Feldman doctrine **cannot** possibly be invoked in this instant case.

(Hoang's Response filed June 27, 2001, at 3-4, emphasis in original).

Unfortunately, Hoang apparently misunderstands the scope of the Rooker-Feldman doctrine. Under Rooker-Feldman, this court cannot exercise jurisdiction over any case that is "inexplicably [sic] intertwined" with a state court decision. In the present case, even though Hoang did not attempt to directly appeal the state court order to this court but, rather, has filed a federal civil rights action, this federal action is nevertheless "inexplicably [sic] intertwined" with the state court decision. The Seventh Circuit's review of the law in Manley v. City of Chicago, 236 F.3d 392 (7th Cir. 2001), is instructive:

> This Court's holding in Long v. Shorebank Development Corp., 182 F.3d 548 (7th Cir. 1999), is also instructive even though we ultimately determined that Rooker-Feldman did not preclude jurisdiction. In Long, the plaintiff was wrongfully evicted from her home and an eviction order was secretly fraudulently obtained against her in state court. We found that Long's due process claim that the defendants deprived her of her property stemmed directly from the eviction order, and could not be considered separate from it because "if the proceedings in the Circuit Court resulted in her favor... it seem unlikely that she would have been evicted..." Id. at 556. We only determined that federal jurisdiction was proper

> because the plaintiff did not have a reasonable opportunity to challenge the eviction in state court. Id. at 557-58
>
> Like the injury suffered by the plaintiffs in the cases discussed above, Manley's injury stems directly from the state court judgement upholding the decision to terminate him made by an administrative board. If we were to grant the relief that Manley requests, we would be required to review the circuit court's rulings and the appellate court's finding that his termination was supported by the record. Manley cannot circumvent the decisions of the state court by seeking damages as opposed to reinstatement in federal court. See, e.g., Maple Lanes, 186 F.3d at 826 ("[I]f a federal court were to award the relief Maple Lanes seeks in the form of monetary damages equal to the value of the liquor license, this result would effectively reverse the state court judgment upholding the revocation of the liquor license."). the fact remains that Manley fully and adequately challenged his termination before the police board and through the Illinois court system.

236 F.3d at 396-97.

Clearly, Hoang's civil rights claims cannot be considered separately from his state court action as his claims stem directly from the state court eviction order. Hoang, like the plaintiff in Manley, has had the opportunity to fully challenge the state court order.[21] As a grant of the requested by this court (directing the return of Hoang's housing unit) would require this court to review Magistrate Ummel's decision, the Rooker-Feldman doctrine bars Hoang's action in this court.

Hoang appears to be under impression that the mere fact that he has alleged a conspiracy renders the Rooker-Feldman doctrine inapplicable. This is clearly not the case, and there is ample case law existing wherein the Seventh Circuit Court of

[21] According to Hoang's filing in this court, Magistrate Ummel's decison is presently working its way through the state court appellate system.

Appeals has upheld the application of the doctrine to cases alleging civil rights conspiracies. See, e.g., Newman v. State of Indiana, 129 F.3d 937 (7th Cir. 1997) (Jewish couple sued 54 agencies, officials, and private persons in Indiana and Maryland alleging a "far-reaching and implausible" conspiracy to prevent them from adopting children; case barred by Rooker-Feldman); Wright v. Tackett, 39 F.3d 155 (7th Cir.1994) (plaintiff alleged that lawyers, his wife's former husband, a bank, three Indiana state court judges, and the State of Indiana conspired to deprive him of his civil rights; case barred by Rooker-Feldman); Harker v. University Park Townhome Owners Association, 1999 WL 38100 (7th Cir. Jan. 7, 1999) (terminated professor filed suit alleging that townhome officials and attorneys had colluded in a conspiracy with a state court judge to deprive him of his constitutional rights; case barred by Rooker-Feldman). Accordingly, this court rules that Hoang's suit is barred by the Rooker-Feldman doctrine and his complaint will be dismissed.

Magistrate Ummel has also argued that he is protected by judicial immunity. A judge will be shielded from liability for judicial acts made within his jurisdiction. Stump v. Sparkman, 435 U.S. 349 (1978); Sellars v. Procunier, 641 F.2d 1295 (9th Cir. 1981). Magistrate Ummel argues that he was acting in a judicial capacity when he entered the eviction order, and is thus entitled to judicial immunity.

In response, Hoang relies on Rankin v. Howard, 633 F.2d 844 (9th Cir. 1980). In Rankin, the Ninth Circuit Court of Appeals held that a judge's private, prior agreement to decide in favor of one party was not a judicial act entitled to judicial immunity. Id. at 847-48. Thus, Hoang, who alleges that Magistrate Ummel conspired with other defendants to agree to evict him, argues that Rankin applies and Magistrate Ummel cannot claim judicial immunity. The fatal flaw in Hoang's argument is the fact that Rankin has been expressly overruled by the Ninth Circuit Court of Appeals. In Ashelman v. Pope, 793 F.2d 1072, 1078 (9th Cir. 1986), the Ninth Circuit noted that its decision in Rankin had been persuasively criticized and then held:

> We conclude that our prior decisions construed the immunity doctrines too narrowly by focusing on

> underlying actions instead of looking to the ultimate acts. Although the Supreme Court has not clearly rejected the analysis of our prior decisions, various circuit courts have explicitly and persuasively rejected that analysis. In addition, policy considerations favor a liberal application of immunity. We therefore hold that a conspiracy between judge and prosecutor to predetermine the outcome of a judicial proceeding, while clearly improper, nevertheless does not pierce the immunity extended to judges and prosecutors. As long as the judge's ultimate acts are judicial actions taken within the court's subject matter jurisdiction, immunity applies. Prosecutors are absolutely immune for quasi-judicial activities taken within the scope of their authority. To the extent that Rankin and Beard are to the contrary, they are overruled.

The Seventh Circuit Court of Appeals endorsed Ashelman in John v. Barron, 897 F.2d 1387, 1391-92 (7th Cir. 1990):

> To support his argument that Judge Barron acted in the absence of jurisdiction, John relies on Rankin v. Howard, 633 F.2d 844 (9th Cir.), cert. denied, 451 U.S. 939, 101 S.Ct. 2020, 68 L.Ed.2d 326 in which the court held that a judge's private, prior agreement to decide in favor of one party was not a judicial act giving rise to judicial immunity. Id. at 848-849. In Ashelman v. Pope, 793 F.2d 1072 (9th Cir. 1986), the Ninth Circuit overruled Rankin, holding that a judge is entitled to immunity even if there was no personal jurisdiction over the complaining party at the time the judge entered the conspiracy. Ashelman, 793 F. 2d at 1078. Judicial immunity is a defense so long as the judge's ultimate acts are judicial actions taken with the court's subject matter jurisdiction. Id; New Alaska Development Corp. v. Guetschow, 869 F.2d 1298, 1302 (9th Cir. 1989). We agree with the reasoning of the Ashelman court, because under Rankin, judges, on mere allegations of conspiracy, could be

> hauled into court and made to defend their judicial acts, the precise result that judicial immunity was designed to avoid. Ashelman, 793 F.2d 1077.

Therefore, it is clear that Hoang's reliance on Rankin is totally misplaced. It is further clear that Magistrate Ummel is entitled to judicial immunity because he was acting within the scope of his jurisdiction and within his judicial capacity when he entered the eviction order.[22] Therefore, the court will grant Magistrate Ummel's motion to dismiss.

Additionally, in light of the Rooker-Feldman analysis, supra, the court finds that the entire action must be dismissed for lack of subject matter jurisdiction. Nevertheless, the court will briefly address the other defendants' motions to dismiss.

PGPM, Inc.'s, Jamestown Homes, Inc.'s, and Randall Hosford's Motion to Dismiss

PGPM, Jamestown Homes, and Hosford argue that Hoang's amended complaint against them should be dismissed for failing to set forth a jurisdictional basis, failing to state a claim for which relief may be granted, and failing to give the defendants fair notice of the claim Hoang seeds [sic] to assert. The court will discuss only the latter two arguments.

The defendants claim that Hoang's amended complaint contains nothing more than assertions of "conspiracy" with no

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[22] Ummel also argues that he cannot be sued under S 1983 because he is not a "person" for purposes of § 1983. Will v. Michgan Department of State Police, 109 S.Ct. 2304 (1989). The Court agrees with Ummel to the extent that Hoang is seeking monetary damages rather than injunctive relief. Hoang's argument that if the state judge in Rankin, supra, was a "person" for purposes of § 1983, then Ummel is likewise a "person", is meritless as Rankin was decided years before the Supreme Court decided Will. Additionally, as Ummel notes, the Eleventh Amendment deprives the federal courts of jubject matter jurisdiction to entertain claims against state officials in their official capacities. Pennhurst State School and Hospital v. Halderman, 104 S.Ct. 900 (1984). Hoang's argument that he is not a citizen of another state or another country is immaterial, as the Eleventh Amendment has been interpreted by the Supreme Court as barring suits by citizens against their own state government. Hans v. Louisiana, 10 S.Ct. 504 (1890); see also Meodows v. State of Indiana, 854 F.2d 1068 (7th Cir. 1988).

accompanying factual allegations sufficient to state a claim for relief. The court agrees with the defendants on this point. Hoang's amended complaint is primarily a recitation of events that allegedly occurred prior to Hoang's eviction from his housing unit and subsequent arrest for trespassing. To properly assert a claim of conspiracy Hoang must allege facts which, if true, would support such claim. Hoang's amended complaint merely alleges that the defendants were all involved at some point in either evicting or arresting Hoang or in moving his personal property. Hoang's only allegation that attempts to link the defendants to a conspiracy is contained in Paragraph 22 of the amended complaint and states as follows:

> In his police report and affidavit (See pages 51-53 of SCROP) Hosford mentioned the facts that Feichter and then Gould paged him while he was off-duty that day to come over immediately first at the National Moving Systems' office and then at the parking lot of Jamestown to arrest Hoang which are the evidence of their conspiracy and planning to arrest Hoang that day for something to steal his property...

Even if Feichter, who is alleged to be the President of National Moving Systems, and Gould, who is alleged to be an employee of PGPM, did page Officer Hosford while he was off-duty, these facts do not support a claim of conspiracy. Nor do any of the other factual recitations in Hoang's amended complaint support a claim of conspiracy as they do not allege any facts to support an agreement between the defendants. Therefore, the amended complaint, as against PGPM, Jamestown Homes, and Hosford, will be dismissed for failure to state a claim. Likewise, due to the insufficient factual allegations, Hoang's amended complaint fails to give fair notice to the defendants of the claims Hoang seeks to assert. Thus, the amended complaint is dismissed on this basis also.

Fort Wayne Police Chief Russell P. York's Motion to Dismiss

York argues that Hoang's amended fails to state a claim for relief, as York is only mentioned in the caption of the amended

complaint and the amended complaint contains no allegations of any sort concerning York. The Seventh Circuit Court of Appeals has squarely held that "[w]here a complaint alleges no specific act or conduct on the part of the defendant and the complaint is silent as to the defendant except for his name appearing in the caption, the complaint is properly dismissed, even under the liberal construction to be given to pro se complainants." Potter v. Clark, 497 F.2d 1206, 1207 (7th Cir. 1974); see also Shashoua v. Quern, 612 F.2d 282, 284-85 (7th Cir. 1979); Jones v. St. Joseph County Police Dept., 1999 WL 325039, *2(N.D. Ind.).

In response to York's motion to dismiss, Hoang states:

> Like Sheriff Herman, Police Chief York is named as a defendant not because he [was] personally involved in the conspiracy to convert Hoang's property and to arrest Hoang to scare him away from claiming his property back but because he, as the head of Fort Wayne Police Department, is liable for the damages from said conspiracy which his officers had participated on May 8, 2001.

Thus, it appears that Hoang is attempting to assert a claim against York in his official capacity. Such a claim is, in actuality, a against the City of Fort Wayne. Gossmeyer v. McDonald, 128 F.3d 481, 494 (7th Cir. 1997). Municipal liability cannot be premised on the doctrine of respondeat superior in Section 1983 actions. Id. Moreover, York, as a supervisor, cannot be held personally liable unless he was personally involved in the alleged illegal conduct. Id. at 496. Before supervisory liability can attach, the supervisor "must know about the conduct it facilitated, approve it, condone it, or turn a blind eye for fear of what they might see. They must in other words act either knowingly or with deliberate reckless indifference." Id. This court agrees with York that since Hoang has not alleged any personal involvement by York and has, in fact, admitted that York was not personally involved in the alleged conspiracy, Hoang's claims against York must be dismissed. See Beauchamp v. City of Noblesville, 2000 WL 33321387 at *2 (S.D. Ind., Dec. 4, 2000).

Sheriff Herman's Motion to Dismiss

Hoang alleges in his amended complaint that Sheriff Herman's deputies broke open Hoang's back door and evict Hoang. Herman requests that the complaint be dismissed for failure to state a claim, arguing that he is entitled to immunity for his quasi-judicial immunity conduct.

In Henry v. Farmer City State Bank, 808 F.2d 1228, 1238 (7th Cir. 1986), the Seventh Circuit held:

> None-judicial officials who official duties have an integral relationship with the judicial process are entitled to absolute immunity for their quasi-judicial conduct. Ashbrook v. Hoffman, 617 F.2d 474, 476 (7th Cir. 1980). Although immunity is normally extended to those performing discretionary and not ministerial acts "those performing ministerial acts under a judge's supervision and intimately related to judicial proceedings have quasi-judicial immunity." Id. at 447 n. 4; see Waits v. McGowan, 516 F.2d 203, 206 (3d Cir. 1975) (official entitled to absolute immunity afforded judge if "he is performing a ministerial function at the direction of the judge"); Duba v. McIntyre, 510 F.2d 590, 592 (8th Cir. 1974) (quasi-judicial absolute immunity extended to police and other court officers "for purely ministerial acts where they do nothing other than perform orders issuing from the court")
>
> Sheriff Massey was at all times acting pursuant to an official court order to enforce a validly entered judgment when he performed the allegedly wrongful acts of which the Henrys now complain. It is difficult to think of a task more intimately related to a judicial proceeding than that of enforcing a money judgment entered by a court. Because the Sheriff was acting in furtherance of his "official duties in aid of the court," Id. at 477, he is entitled to quasi-judicial absolute immunity from suit for damages arising from those acts.

Clearly, in the present case, Sheriff Herman's deputies were acting pursuant to an official court order when they entered Hoang's residence. Therefore, Hoang's amended complaint fails to state a cause of action against Sheriff Herman, and Sheriff Herman's motion to dismiss will be granted.

National Moving Systems' Motion to Dismiss

National Moving Systems argues that Hoang failed to state a jurisdictional basis as there are no facts in the amended complaint to support diversity jurisdiction. National Moving further argues that, assuming Hoang is alleging a violation of constitutional rights against National Moving Systems that would implicate Section 1983, National Moving's act of removing and storing Hoang's property is not "state action" as required for the basis of an action under Section 1983. National Moving is clearly correct on this issue. See Flagg Brother, Inc. v. Brooks, 436 U.S. 149 (1978).

In response to National Moving's motion, Hoang asserts that he is alleging violations of 42 U.S.C. § 1985(3).[23] A plaintiff raising a claim under Section 1985(3) must allege (1) the exis-

[23] 42 U.S.C. § 1985(3) States:

If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support for advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and excising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

tence of a conspiracy, (2) a purpose of depriving a person or class of persons of equal protection of the laws, (3) an act of furtherance of the alleged conspiracy, and (4) an injury to person or property or a deprivation of a right or privilege granted to U.S. citizens. Brokaw v. Mercer Counter, 235 F.3d 1000, 1024 (7th Cir. 2000); Majeske v. Fraternal Order of Police, Local Lodge No.7, 97 F.3d 307, 311 (7th Cir. 1996).

To establish that the purpose of the conspiracy is to "deprive a person or class of persons of equal protection of the laws," the plaintiff must alleged "some racial, or perhaps otherwise class-based invidiously discriminatory animus behind the conspirators' action." Griffin v. Breckenridge, 91 S.Ct. 1790 (1971). Hoang's amended complaint completely fails to allege any sort of racial or class-based invidiously discriminatory animus behind National Moving's acts. Rather, Hoang's amended complaint implies that the alleged conspirators sole motive was to steal Hoang's personal property. Therefore, the court agrees with National Moving that Hoang has failed to state a claim and his amended complaint must be dismissed.

R. Scott Perry's Motion to Dismiss

Perry based his motion on Rule 12(b)(6) of the Federal Rules of Civil Procedure and alleges that Hoang's complaint fails to state a claim upon which relief can be granted. As Hoang's amended complaint fails pursuant to the Rooker-Feldman doctrine, discussed above, his claim against Perry will be dismissed.

Conclusion

On the basis of the foregoing, all of the defendants' motions to dismiss are hereby GRANTED and this cause is hereby DISMISSED WITH PREJUDICE.

Enter: July 30, 2001.

s/ William C. Lee
William C. Lee, Chief Judge
United States District Court

Rents form bulk of Lee's income

JUN 19 1982

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By TRACY WARNER
Staff Writer

Judge William C. Lee of Fort Wayne had the highest income and the largest debt of the three U.S. District Court judges in northern Indiana who filed financial disclosure reports for 1981.

Lee reported an income between $181,882 and $295,782 in addition to his salary as a federal judge. The judges were required to check incomes in broad categories rather than list specific amounts.

The judge also listed loans of between $295,000 and $780,000.

Lee's income and debt far surpass amounts listed by James T. Moody, a federal judge in Hammond, and Allen Sharp, the district's chief judge who sits on the South Bend bench. The fourth judge in the district, Michael S. Kanne, was not required to file because he did not assume the bench until 1982.

According to the financial report, Lee received $74,532 from the law firm of Hunt, Suedhoff, Borror, Eilbacher & Lee. As part of an agreement with his former partners, Lee will receive $2,500 per month through 1983. Lee left the firm when he assumed the bench in August.

A large part of Lee's income came from rent on three properties. He reported receiving between $50,000 and $100,000 each from Brentwood Park Apartments, in which he reported owning a one-third interest, and 5926-5940 Guild Drive and 2002-2020 Chartwell Drive. Each property was valued at more than $250,000.

Lee also reported receiving between $5,000 and $15,000 from his half-ownership of a 243-acre farm near Pleasant Lake. That property was valued between $100,000 and $250,000.

Other income reported by Lee was capital gains from two Fort Wayne properties and interest from a promissory note and real estate mortgage to Maxwell Smith and Roland Gardill.

Lee reported receiving two loans of $100,000 to $250,000 each. They came from First Federal Savings & Loan Association and Waterfield Mortgage Co.

Five loans of between $15,000 and $50,000 each were reported. They came from Fort Wayne Federal Savings & Loan, Lincoln National Bank & Trust Co., and Dick E. Lehman. Two loans came from Anthony Wayne Bank.

He reported two loans of between $10,000 and $15,000 each from Lincoln National Bank & Trust Co. and Albion Production Credit Association.

The other judges reported little outside income beyond the $70,300 each receives as a federal judge. Sharp reported $8,676 income as an Air Force Reserve officer. Sharp reported owning two parcels of farm land Warren and St. Joseph counties, but reported no income from the latter and a $3,351 loss from the Warren County property. Each was valued between $50,000 and $100,000.

Sharp reported two loans, each between $15,000 and $50,000, from the Federal Land Bank and the First Source Bank in South Bend.

Moody reported no debts, and his only outside income was $250 as a member of the advisory board of the Bank of Indiana. He reported resigning from the board in July because of a possible conflict of interest.

Moody and his wife reported joint ownership of a vacant lot in Florida valued between $5,000 and $15,000, and one-third ownership of a house in Hobart valued between $15,000 and $50,000.

Moody also reported his wife received $3,395 in wages from the city of Hobart, and that his wife also had interest in land trusts with the Chicago Title & Trust Co. and the Bank of Wheaton valued between $100,000 and $250,000.

Fort Wayne Journal-Gazette, June 19, 1982. Page C. Collection of the Journal-Gazette Library.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

LIEU B. HOANG,	)	
	)	
vs.	)	CAUSE No. 1:01-CV-184
	)	
JERRY L. UMMEL, Magistrate	)	
Allen Superior Court, Small.C.D.,	)	
JAMES A. HERMAN, Sheriff	)	
Allen County Sheriff Department,	)	
RUSSEL P. YORK, Chief	)	
Fort Wayne Police Department,	)	
PGPM, Inc.,	)	
JAMESTOWN HOMES, Inc.	)	
R. SCOTT PERRY,	)	
RANDALL L. HOSFORD, and	)	
NATIONAL MOVING SYSTEMS.	)	

AFFIDAVIT OF A. LONI HOANG

The witness, A. Loni Hoang, being first duly sworn, deposes and states as follows, that:

1. Shortly after 9:00 AM but before the State Court was in session for my brother's trial on April 20, 2001, I stepped out of the courtroom in the Allen Superior Court, Small Claims Division, to look for my brother, Lieu B. Hoang.

2. I saw my brother at the other end of the hall, about thirty-five (35) feet away, staring at some people behind me. I turned back and saw Magistrate Jerry L. Ummel talking to the Attorney for Jamestown Homes, Mr. R. Scott Perry, at the counter about five (5) feet away from me.

3. I overheard their conversation as follows:

UMMEL: ***I don't have any problem with finding some ground to evict him.***

PERRY: ***That would make Jamestown people really happy. They've really wanted to get rid of him.***

UMMEL: ***OK, consider it done. I'll evict him.***

4. I immediately went [to] my brother to tell him what they said. My brother told me the law did not allow them to do that. When I looked back at them I saw Mr. Perry walking away with a file in his hand.

5. About a half of an hour later when Magistrate Ummel was at the bench, I saw Mr. Perry returning the file to Magistrate Ummel who used that file to call my brother's name and case for the trial to be held that morning.

6. The foregoing facts are known to me to be true and of my own knowledge. I am competent to testify to such facts and would testify so at the hearing and at the trial of this matter.

s/ A. Loni Hoang
A. Loni Hoang
5116 Holly Oak Road
Fort Wayne, IN 46845-9449
(219) 484-1793

SUBSCRIBED & SWORN TO BEFORE ME THIS 25TH DAY OF JUNE, 2001

s/ Kristi Sonler
Kristi Sonler, Notary Public

County of Allen, State of Indiana
My commission expires: *10-23-07*

CIRCUIT AND SUPERIOR COURTS
38TH JUDICIAL CIRCUIT
ALLEN COUNTY, INDIANA

JAMESTOWN HOMES, INC.	)	Cause No. 02D04-0104-CF-7393
	)	
Plaintiff(s),	)	JUDGMENT OR ORDER
	)	OF THE COURT
vs.	)	
	)	
LIEU HOANG	)	
	)	
Defendant(s),	)	

Plaintiff Jamestown Homes, Inc. appears by counsel. Defendant Lieu Hoang appears by Attorney Donald Frew. The Magistrate, having heard evidence on Defendant's Motion to Correct Error, now finds as follows:

1. The Plaintiff filed a complaint requesting immediate possession of a residential unit being occupied by the Defendant Lieu Hoang. The parties had entered into a Cooperative Housing Occupancy Agreement in January of 2000.

2. The matter was set for hearing, regarding the possession issue only, on April 20, 2001, at 8:30 a.m.

3. At that trial the Plaintiff appeared by counsel and Defendant Lieu Hoang appeared in person and a trial was conducted regarding the issue of possession.

4. At trial the Plaintiff was able to prove that the Defendant was in breach of the Occupancy Agreement. For these reasons, the Plaintiff was granted an order for possession.

5. On a about April 12, 2001, the Defendant Lieu Hoang filed a Third Party Claim against PGPM, Inc.

6. A subsequent damage hearing has been scheduled by the parties for July 10, 2001, at 1:30 p.m., to address all monetary claims among the parties.

7. The Court now denies the Defendant's Motion to Correct Error. Pursuant to Cunningham v. Georgetown Homes, Inc., 708 N.E. 2d 623 (Ind.App. 1999), this Court has the jurisdiction to decide the question of possession without the necessity of the Plaintiff filing a foreclosure action. Any possessory interest, which the Defendant may have, is protected by the subsequent damage hearing.

8. The Defendant in this action has filed a lawsuit against Magistrate Jerry Ummel, in the United States District Court for the Northern District of Indiana. At the trial on the Motion to Correct Error, the Plaintiff asked that the Magistrate recuse himself from this matter. Magistrate Jerry Ummel, having ruled on the Motion to Correct Error, now recuses himself from the case.

DATED: June 26, 2001

s/ Jerry L. Ummel
Jerry L. Ummel, Magistrate
Allen Superior Court

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

AFFIDAVIT OF DONALD J. FREW

COMES NOW Donald J Frew, being over the age of eighteen (18) and competent to testify in the State of Indiana and hereby swears and affirms the following:

1. My name is Donald J. Frew;

2. I am license[d] to practice law in the State of Indiana;

3. My attorney number is 16717-02;

4. My legal services were retained to represent Lieu B. Hoang in the Allen County Superior Court, Small Claims Division in Cause No. 02D04-0104-SC-7393;

5. On May 29, 2001, I attended a hearing on my client's Motion to Correct Errors in the aforementioned cause of action before the Honorable Jerry L. Ummel, Magistrate of the Allen County Small Claims Court;

6. I took the opportunity to request Magistrate Ummel for the return of my client's personal property that was seized by Jamestown Homes, Inc. on or about May 8, 2001, and moved to National Moving Systems;

7. Magistrate Ummel indicated to me that my request was irrelevant and suggested that I contact R. Scott Perry, the counsel of record for Jamestown Homes, Inc., in relation to the return of my client's personal property;

8. Mr. R. Scott Perry had failed or had refused to appear for said hearing on the aforementioned Motion to Correct Errors.

Under penalties of perjury in the State of Indiana, I swear and affirm that the information contained in this Affidavit is true and accurate to the best of my knowledge and belief.

s/ Donald J. Frew
DONALD J. FREW

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Subscribed and sworn to before me, a Notary Public in and for said County and State, this 7th day of September, 2001

My Commission Expires:
April 17, 2009

s/ Shelly M. Schaefer
Shelly M. Schaefer, Notary Public
Resident of Allen County, Indiana

STATE OF INDIANA) IN THE ALLEN SUPERIOR COURT
) SS: SMALL CALIMS DIVISION
COUNTY OF ALLEN) CAUSE No.: 02D01-0104-SC-007393

JAMESTOWN HOMES, INC.)
Plaintiff,)
)
vs.)
)
LIEU B. HOANG,)
Defendant,)
)
vs.)
)
PGPM, INC.)
Third-Party Defendant.)

RELEVANT EXCEPTS FROM THE TRANSCRIPT OF THE HEARING ON MOTION TO CORRECT ERRORS

(This hearing is held on May 29, 2001 by Magistrate Jerry L. Ummel (Ummel). Defendant, Lieu B. Hoang, appears with his attorney Donald J. Frew (Frew). Neither the Plaintiff, Jamestown Homes, Inc., nor its attorney, R. Scott Perry, appears for the hearing. PGPM, Inc. also fails to appear.)

UMMEL: ... I will note that the Defendant is here with counsel and that the Plaintiff Jamestown Homes, Inc has failed to appear.....
(Original Transcript: page (P.) 4, lines (L.) 10- 13)

FREW: But at this point, I don't see opposing counsel, so---

UMMEL: Mr. Frew, go right ahead and make your argument.
(Original Transcript: P. 5, L. 1-4)

* * *

UMMEL: Thank you, Mr. Frew. Mr. Frew, you've made some

very good points. In fact, at least two, but one main point is of course, is the distinction from a pure lease is that this Jamestown Home, Inc. agreement entails, of course, as is always the case in Small Claims, the issue was never raised at trial. However, you know by the rules, your client is protected because defenses are preserved in Small Claims and he doesn't need to raise any of those issues, such as the ***Cunningham*** case or that type of situation to be protected. Uh, I'm going to take this matter under advisement.

(Original Transcript: P. 19, L. 2-14)

* * *

FREW: ... He (Hoang) has been provided no correspondence with regard to his (personal) property and if you read the statutes, I believe there is a 90 day deadline about if it goes unclaimed then they can try to take possession of it. We certainly would like to at least to make a record that my client wishes to have his property back, he does not wish to violate any Indiana laws and find himself being accused of trespassing or conversion or theft... Your Honor. I hope the remedy that we could pursue out of this, is setting aside the Court's previous order, and order that would return my client's property to him...

(Original Transcript: P. 16, L. 8 to P. 17, L. 2)

* * *

... I hope the Court could at least acknowledge his desire to get the property back without violating any laws and therefore, (inaudible) the imposition of that and any unlawful taking.

UMMEL: I believe that is a separate issue, and there is a local Small Claims rule that specifically deals with that and if you follow those steps with Mr. Perry's agreement, you may be able to resolve this matter.

(Original Transcript: P. 20, L. 11-20)

National Moving Systems, Inc.
1501 East Berry Street
Fort Wayne, IN 46803
Tel (219) 424-7500 Fax (219) 422-0943

Invoice

DATE	INVOICE #
5/6/2001	**21050036**

Jamestown Apartments
Mr. Kelly Knowland
1700 Hobson Road
Ft. Wayne, IN 46805

YOUR P.O. NO.	TERMS	DUE DATE	OUR BOL#
	Due on receipt	5/6/2001	3948

DESCRIPTION	QTY	RATE	AMOUNT
Local Move Commercial			
Tuesday – Loading into Truck #165, Trailer #804502 and full size van; 76.5hrs. @ $30hr	76.5	30.00	2,295.00
Wednesday – Unload Truck #165 and full size van at our warehouse; 9.25hrs @ $30hr.	9.25	30.00	277.50
Wednesday – Finish loading Trailer #804502 and 100% unloading of the Trailer into our warehouse; 71 hrs @ $30hr.	71	30.00	2,130.00
Cartons used : (34) 1.5 cube : (31) 3.0 cube : (8) 4.5 cube : (90) wardrobes : 23 rolls of tape		545.70	545.70
Tractor/Trailer Rig 21.75hrs @ $25hr. (No overtime rates charged on either day) (See attached time summaries and inventory sheets)	21.75	25.00	543.75
		TOTAL	**$5,791.95**

THANK YOU for using National Moving Systems.
Please mail your check to the above address.
Please use one copy of the invoice as the remittance advice.

National Moving Systems, Inc.
1501 East Berry Street
Fort Wayne, IN 46803
Tel (219) 424-7500 Fax (219) 422-0943

Invoice

DATE	INVOICE #
5/9/2001	**21050037**

Jamestown Apartments
Mr. Kelly Knowland
1700 Hobson Road
Ft. Wayne, IN 46805

YOUR P.O. NO.	TERMS	DUE DATE	OUR BOL#
	Due on receipt	5/9/2001	

DESCRIPTION	QTY	RATE	AMOUNT
One month storage fees – May 9 through June 8, 2001; includes 30% discount – **Approximately 25,600 lbs***		469.77	469.77

TOTAL $469.77

THANK YOU for using National Moving Systems.
Please mail your check to the above address.
Please use one copy of the invoice as the remittance advice.

* Emphasis added.

MISCELLANEOUS INCIDENT REPORT

Complaint No. **01-56866**

FORT WAYNE POLICE DEPARTMENT

* * *

SUBJ. ARRESTED: LIEU B. HOANG, M/A/51, 04/14/50, 5'5", 145LBS, BRO. & BRO., (S.S. Number)

CHGS: CRIM. TRES.

*At approx. 0818 hrs today the subj. above was legally + properly evicted from 1682 Hobson Rd. by members of FWPD + ACPD.

*After being evicted + told not to return to JTH the subj. returned at 1107 hrs. + 1758 hrs. (The Def's family came to JTH @ 1455 hrs.)

*This Off. is an agent of JTH - employed part-time for security.

While off duty today I recvd several pages from JTH MNGT and heard at least 2 radio (FWPD) calls to JTH ref. Mr. Hoang.

At Approx. 1758 hrs. I recvd pages from JTH MNGT ref. Mr. Hoang being on the JTH prop./1682 Hobson.

I also recvd a page from Mr. T.J. Feichter of Natl. Moving Systems who were moving Mr. Hoang's prop. out of 1682 Hobson Rd. Mr. Feichter advised me that Mr. Hoang had come to Mr. Feichter's office @ 1501 E. Berry + attempted to intimidate Mr. Feichter.

I t.x'd FWPD comm. + advised them that I would be en route to 1682 Hobson Rd. I asked that if Mr. Hoang was there upon their arrival, to have Mr. Hoang wait for me.

Once I arrived, I learned that Mr. Hoang had been properly served all of his eviction + court documents. – Mr. Hoang had them in his possession + had given them to FWPD off's. to see.

Once I also learned from Mr. Hoang that he had been found to returned to 1682 Hobson Rd./JTH, I placed Mr. Hoang under arrest for crim. Tres.

Mr. Hoang was carefully handcuffed (DBL. Locked) + taken to the ACLU w/o incident by Off. R. Elmer of the FWPD.

Mr. Hoang's veh. a red Pont. Trans Am, Lic. Pl 2R1096 Lax 4 oc Vln being 4348 was towed from JTH prop. for me by Off. G. Kinsey of the FWPD by Parker's Towing. Mr. Hoang's brief case was in his veh. was given to him to take to the ACLU.

I met Mr. Hoang – Off. Elmer @ the ACLU & once again advised Mr. Hoang that if he returned to 1682 Hobson/JTH I would arrest Mr. Hoang again for Crim. Tres. Mr. Hoang said he understood but he did not say he would not return.

s/ R. L. Hosford
FW # 1417

No. 01 CM 3557 .

STATE OF INDIANA

vs.

LIEU B. HOANG
1682 Hobson Road
Fort Wayne, IN 46805
Defendant

INFORMATION FOR
Criminal Trespass

WITNESSES:

- R. L. Hosford, FWPD 1417
- Keeper of Records, office Jamestown Homes.
- T. Bogenschutz 1356 FWPD
- R. Elmer FWPD 1661
- G. Kinsey FWPD 1266
- D. Nelson FWPD 1596
- T.J. Feichter c/o Nat'l Moving Systems
  1501 E. Berry Street.

STATE OF INDIANA) IN THE ALLEN SUPERIOR COURT
) SS: SMALL CLAIMS DIVISION
COUNTY OF ALLEN) CASE NO.: **02D04-0104-SC-7393**

JAMESTOWN HOMES, INC.
Plaintiff

vs.

LIEU B. HOANG,
Defendant

and

PGPM, Inc.,
Third-party Defendant

AFFIDAVIT OF ATTORNEY FEES

Comes now R. Scott Perry, attorney for Plaintiff in the above-captioned matter, being first duly sworn upon his oath, says as follows:

1. That the attorney for Plaintiff has incurred expenses and expended the following hours:

02/12/01	0.2	Contact from client regarding tenant refusing entry to dwelling unit.
03/19/01	0.2	Phone call from client. Tenant still refusing entry to dwelling unit.
04/04/01	0.6	Phone call from client regarding inspection but bedroom doors were padlocked, would not allow entry. Prepare eviction and file.
04/13/01	0.5	Received counterclaim filed by Defendant. Letter to client.
04/20/01	2.0	Attend trial for eviction.
04/30/01	0.4	Receive and review with client order for possession dated April 23, 2000 [sic].
05/01/01	0.2	Letter from client.
05/02/01	**0.3**	**Requested Writ of Restitution.***

* Emphasis added.

05/08/01	0.6	Contact from Defendant. Conferences with client.
05/14/01	1.0	Prepare statement in opposition to defense motion to correct errors.
05/15/01	0.1	Letter from client.
05/15/01	0.2	Letter to National Moving Systems.
06/14/01	0.4	Letter to Defendant regarding damage claim
06/27/01	0.3	Receive Court's order regarding Defendant's motion to correct error. Relay information to client.
07/05/01	0.3	Receive Notice of Appeal from trial court.
07/09/01	2.0	Prepare for trial. Conference with client and witnesses.
07/10/01	2.0	Prepare for trial and attend trial.
	11.3	Total

2. That R. Scott Perry's hourly rate for such matters is $150.

3. That a fair and reasonable fee for the above services would be $1,695

FURTHER AFFIANT SAYETH NAUGHT

s/ R. Scott Perry
R. Scott Perry, 6323-02

Subscribed to and sworn to before me a Notary Public in and for said county and state this 10th day of July, 2001.

s/ Harmony Duba
Harmony Duba, Notary Public
Resident of Allen County, IN
My commission expires: 12/15/06

CIRCUIT AND SUPERIOR COURT
38TH JUDICIAL CIRCUIT
ALLEN COUNTY, INDIANA

Janestown Homes	)	CAUSE No. *02 SC 7393*
	)	
vs	)	ORDER OR JUDGMENT
	)	OF THE COURT
Lieu Hoang	)	

DEFD. Requests stay of eviction

AFTER the Sheriff has arrived

For the move-out. Motion denied.

DATE: *5-8-2001*

s/ Jerry L. Ummel
JUDGE/MAGISTRATE

State of Indiana

County of Allen

JAMESTOWN HOMES INC

vs/and

LIEU HOANG

1682 HOBSON RD

FT WAYNE INDIANA 46805

Allen Circuit and Superior Courts

Case Number: 02D01-0104-SC-007393

WRIT OF RESTITUTION

TO THE SHERIFF:

Please review the attached order of the court and proceed as requested.

4-23-01 Judgment/Order Date

$ POSS Judgment Amount

$ 35.00 Court Costs

SCOTT R PERRY

Attorney XXXXXXXXXXXXXXXXXXXX

424-1023 KELLY

XXXXXXXXXXXXXXXXX Phone Number

Date: MAY 3, 2001

Elizabeth A. Gloor J.C.

Attest: Clerk, Allen Circuit Court

[Seal]

SHERIFF'S RETURN

Plaintiff Notified _____

Date of Move _____

I HEREBY RETURN THIS

Possession restored _____.

Possession not restored _____.

_____ _____

Dated Sheriff of Allen County, Indiana

Sheriff's Control Number: _____

IC 33-17-2-6 and IC 34-1-34-7

10/95 WRITRES CLK014,02/96

Writ Number 26527

Execution Docket Bk/Pg _____

151237

CIRCUIT AND SUPERIOR COURTS
38TH JUDICIAL CIRCUIT
ALLEN COUNTY, INDIANA

JAMESTOWN HOMES, INC. Plaintiff(s),	)	Cause No. 02D01-0104-SC-7393
vs.	)	JUDGMENT OR ORDER OF THE COURT
LIEU B. HOANG, Defendant(s),	)	
PGPM, INC. Third-Party Defendant(s)	)	

Plainttiff by Attorney Scott Perry. Defendant in person. The Magistrate, having previously taken this matter under advisement, now finds as follows:

1. The Defendant resided at Plaintiff's cooperative housing project at various times since 1976. Most of the time, he was residing with his recently deceased mother.

2. The Defendant personally signed an occupancy agreement in March of 2000.

3. In March of 2001, the Defendant breached Article 16 of the agreement by failing to allow a proper inspection of the premises. For these reason, the Plaintiff is entitled to a judgment for possession.

Judgment for Plaintiff against the Defendant for possession of 1682 Hobson Road, in Allen County, Indiana. The Defendant has seven days from the receipt of this order to vacate the premises. A damage hearing is now set for July 10, 2001 at 1:30 p.m.

DATED: April 23, 2001

s/ Jerry L. Ummel
Jerry L. Ummel, Magistrate
Allen Superior Court

STATE OF INDIANA) IN THE ALLEN SUPERIOR COURT
) SS: SMALL CLAIMS DIVISION
COUNTY OF ALLEN) CAUSE No.: 02D01-0104-SC-007393

JAMESTOWN HOMES, INC.,)
Plaintiff,)
vs.)
)
LIEU B. HOANG,)
Defendant,)
vs.)
)
PGPM, INC.,)
Third-Party Defendant.)

RELEVANT EXCEPTS FROM THE TRANSCRIPT OF THE TRIAL/EVICTION HEARING

(The proceeding is held on April 20, 2001 by Magistrate Jerry L. Ummel (Ummel). The Plaintiff appears by counsel, R. Scott Perry (Perry). The Defendant, Lieu B. Hoang (Hoang) appears pro se. The Third-Party Defendant, PGPM, Inc. fails to appear)

UMMEL: I just wanted to make sure we have the right person here, Mr. Hoang. Mr. Hoang, let me explain to you what's going to occur today. The hearing set today only involves the issue of possession. The Plaintiffs are going to attempt to prove that they should be entitled to take back the possession of the property. You can present any evidence today that is relevant to the issue of possession. I have reviewed your Counter-Claim. I will not enter any monetary judgment today, either in their favor for rent or damage or in your favor for damage. There will automatically be a second hearing date. The only issue today is going [to] involve any breach of this lease agreement and their ability to take possession. If you start talking about damage to your computer, I'm gonna cut you off. Do you understand that?

HOANG: Yes, your honor.

(Original Transcript: P. 4, L. 10 – P. 5, L. 3)

(Hoang objects Perry making a direct examination of his witness, Kelly Knowland, without calling him to the witness stand)

PERRY: Oh, do you want him up at the stand?

UMMEL: Mr. Hoang, I'm gonna tell you something. I run this courtroom.

HOANG: I'm sorry, your honor.

UMMEL: Is there gonna be anymore questions about that?

HOANG: No, your honor. (Original Transcript: P. 8, L. 3 – 9)

* * *

UMMEL: Mr. Hoang, I have no idea why you didn't allow them access to those bedrooms. I don't believe for even one tiny minute that you'd think those are closets. You're a very intelligent man. You've done an excellent job in presenting your case today. I do not believe you think those are closets, that's a three bedroom townhouse. I don't know why you didn't give them access. You haven't denied that you said the key is in the car, I wrecked. You never made any denial to any of their testimony about going to get them a key. I don't [know] why you didn't give them access, only you know that and there's certainly some reason that you didn't want them in there, and I don't know what it is. Uh, that's a breach of the lease agreement. It's not a major breach, but part of this whole--- this is not your basic apartment, part of the whole lease agreement allows that inspection to keep those places nice so everyone keeps them in good condition. You sure don't have to agree to that type of thing. I wouldn't like it. The reason you own a home is so people can't come in and inspect it but you've chose to do that, you chose to live there. They have that right to come in and do that. They had a right to look at those other two bedrooms and you didn't give them access. I am gonna order you to vacate the premises.

(Original Transcript: P. 77, L. 17 – P. 78, L. 19)

STATE OF INDIANA)
COUNTY OF ALLEN)

IN THE ALLEN SUPERIOR COURT
SMALL CLAIMS DIVISION ANNEX
113 W. BERRY STREET
FORT WAYNE, INDIANA 46802

CASE NUMBER: 02D01-0104SC-7393
SC

JAMESTOWN HOMES, Inc.

vs.

LIEU B. HOANG

vs.

PGPM, Inc.
c/o Robyn Bolle
1700 Hobson Road
Fort Wayne, IN 46805

3rd Party
NOTICE OF ~~COUNTERCLAIM~~

8256

TYPE OF SERVICE REQUIRED:		TYPE OF CLAIM BEING FILED:				PLAINTIFF(S) SEEKS JUDGMENT:	
X	CERTIFIED MAIL		ACCIDENT - 8050	X	DAMAGES - 8020		
	SHERIFF		ACCOUNT - 8010		EJECTMENT-LANDLORD/TENANT - 8070	in the sum of $	6,000.00
	PRIVATE PROCESS		ASSIGNED CLAIM (COL. AGENCY) - 8090		PROMISSORY NOTE - 8040	court costs of $	
X	OTHER hand-		BACK RENT-LANDLORD/TENANT - 8060		RETURN OF PERSONAL PROPERTY - 8080	for a total of $	6,000.00
	delivery	X	CONTRACT - 8030	X	OTHER - 8000 conversion and racial harassment		

You have been sued by the individual(s) set forth above. A brief statement of the nature of the claim against you as follow:

Since August of 1976, the Defendant (Hoang) has rented a dwelling unit at Jamestown Homes - about 20 years before PGPM, Inc. was awarded the contract to manage Jamestown Homes by the U.S. Department of Housing and Urban Development. Hoang has never breached the lease but PGPM did by harassing minority and refusing to repair the roof as requested by Hoang on July 28, 2000 when there were some shingles falling down (See Defendant's Exhibit A). Hoang kept requesting PGPM to repair the roof every time he had a chance. The latest was on March 30, 2001 when PGPM's maintenance supervisor, Fred Gould, came over for inspection. He said he would repair the roof immediately but he didn't. As a result, when it was raining on Thursday night, April 5, the water ran down through the roof causing approximately $3000.00 damages to Hoang's computer, software, books and videotapes. Even as of this filing date, PGPM has not repaired the roof permanently.

PGPM didn't like to do the repair as required by the lease but the inspection, especially when Hoang was not home, ransack his home. As a result, at least $5000.00 of valuable property including cash and jewelry were missing gradually. ere were no evidence of forced entry by a third party.

PGPM, through Jamestown's Attorney, has lied to the Court in their complaint not only about Hoang's breach of se but also about the rent to cover up their own breach of lease, conversion and racial harassment.

CAREFULLY READ THE INFORMATION ON THE REVERSE SIDE.

EU B. HOANG, Pro se
92 Hobson Road
rt Wayne, IN 46805-4880
19) 422-1631

This claim is set for hearing on the TRIAL CALENDER on April 20, 2001 at 8:30 A.M. on the First Floor of the Courthouse Annex, 113 West Berry St., Fort Wayne, Indiana 46802

I hereby certify that a true and complete copy of s Counterclaim was hand-delivered to the Plaintiff's orney, R. Scott Perry at 110 West berry Street, # 1214 t Wayne, IN 46802 and PGPM, Inc. at 1700 Hobson Rd t Wayne, IN 46805 on April 12, 2001.

LIEU B. HOANG, Pro se APR 13 2001

Elizabeth A. Gleason J.C.

IEU B. HOANG, Pro se

HOUSEKEEPING

ACCEPTABLE ☐ UNACCEPTABLE ☐

JAMESTOWN HOMES, INC.
1700 HOBSON ROAD
FORT WAYNE, INDIANA 46805
(219) 424-1023

Maintenance Request

№ 20754

DATE RECEIVED 7/28/00
TIME RECEIVED 10:45
RECEIVED BY JS

LOCATION 1682
NO.
OCCUPANT Hoang PHONE
WORK REQUESTED
V. roof above backdoor
thinks there is a hole
leaking
SPECIAL INSTRUCTIONS

AUTHORIZATION TO ENTER IN OCCUPANT'S ABSENCE? ☐ Yes ☒ No
TIME SCHEDULED _____ ASSIGNED TO _____
CHARGE TO ☐ Occupant ☐ Management ☐ Owner AMOUNT $ _____

SWHSN	7/31	3:15	3:30			

	TOTAL	

REMARKS V. roof at Rear door
OK

☐ JOB COMPLETE
☐ NOT COMPLETE

APPROVED

DEFENDANT'S EXHIBIT A

Membership Certificate

Nº 2249

OF

JAMESTOWN HOMES, INC.

AN INDIANA CORPORATION

This is to certify that

Hoan Thi Vu and Lieu Ba Hoang, her son, as Tenants by the Entireties is the owner of a membership of

JAMESTOWN HOMES, INC.

and as such is entitled to all the rights, privileges and conditions of such membership as set forth in the Articles of Incorporation and By-Laws, as amended, respectively from time to time. The membership represented by this Certificate is subject to the lien rights of the Corporation as against this membership, as set forth in the By-Laws of the Corporation.

IN WITNESS WHEREOF the Corporation has caused this Certificate to be executed by its duly authorized officers and its Corporate Seal to be hereunto affixed as of this 10th day of August, 19 76.

ATTEST:

By: Marjorie P. McClure
Secretary

[Seal]

JAMESTOWN HOMES, INC.

By: Stephen R. Jo...
President

A-45

APPENDIX T

TRANSFER OF CERTIFICATE FOR MEMBERSHIP

For value received, the undersigned hereby sell, assign and transfer unto_____

_____

the Membership represented by the within Certificate and do hereby irrevocably constitute and appoint the assignee named above as attorney to transfer the said Membership Certificate on the books of said Corporation. For value received, the undersigned hereby surrenders and releases all rights under his Occupancy Agreement (or the right to obtain an Occupancy Agreement if one has not yet been executed) and all rights of occupancy, on dwelling unit No. _____

_____

WITNESS:

_____ _____ (SEAL)

_____ _____ (SEAL)

Note: To be eligible for a transfer of the Membership Certificate, the person named above as assignee is required to execute an Occupancy Agreement on the dwelling unit described above.

Date _____

A-46

Supreme Court, U.S.
FILED
AUG 30 2002
OFFICE OF THE CLERK

No. 02-156

IN THE
Supreme Court of the United States

LIEU B. HOANG,

Petitioner,

v.

JERRY L. UMMEL, MAGISTRATE ALLEN SUPERIOR COURT, SMALL CLAIMS DIVISION, JAMES A. HERMAN, SHERIFF, ALLEN COUNTY SHERIFF'S DEPARTMENT, RUSSELL P. YORK, CHIEF FORT WAYNE POLICE DEPARTMENT, PGPM, INC., JAMESTOWN HOMES, INC., R. SCOTT PERRY, RANDALL L. HOSFORD AND NATIONAL MOVING SYSTEMS, INC.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

JOINT BRIEF IN OPPOSITION TO WRIT OF CERTIORARI FOR THE RESPONDENTS JAMES A. HERMAN, SHERIFF OF ALLEN COUNTY AND R. SCOTT PERRY

JOHN O. FEIGHNER
Indiana Bar #6800-02
GEORGE SISTEVARIS*
Indiana Bar #13770-02
HALLER & COLVIN, P.C.
444 East Main Street
Fort Wayne, IN 46802
260-426-0444

Counsel for Respondent,
James A. Herman, Sheriff
Allen County Indiana

THOMAS C. EWING*
Indiana Bar #6765-02
HUNT SUEDHOFF KALAMAROS, LLP
803 S. Calhoun Street
900 Courtside Building
Fort Wayne, IN 46802
260-423-1311

Counsel for Respondent,
R. Scott Perry

*Counsel of Record

28 pp

QUESTIONS PRESENTED

1. Whether the *Rooker-Feldman* Doctrine bars Hoang from seeking relief in federal district court on claims which arise from a state court's judgment.

2. Whether Hoang's allegation that the district court judge was biased, which was not raised before the district court, may form the basis for reversal of the district court's decision, and whether evidence of alleged bias, presented for the first time in the court of appeals, was sufficient to support a finding of bias.

3. Whether the actions of James A. Herman, as Sheriff of Allen County, Indiana, or of the deputies of the Allen County Sheriff, were protected by quasi-judicial immunity, where certain unnamed deputies acted pursuant to an official order of a state court.

RULE 29.6 DISCLOSURE STATEMENT

As to Respondent James A. Herman, Sheriff of Allen County Indiana:

James A. Herman is the duly elected Sheriff of the Allen County Police Department, a law enforcement agency (established pursuant to Ind. Code § 36-2-13-1 et seq.), of the County of Allen, State of Indiana, which county is a unit of local government. Ind. Code § 36-2-1-1 et seq.

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I. THE *ROOKER-FELDMAN* DOCTRINE BARS HOANG FROM SEEKING RELIEF IN FEDERAL DISTRICT COURT ON CLAIMS WHICH ARISE FROM A STATE COURT'S JUDGMENT. 5

II. HOANG'S ALLEGATIONS OF BIAS AGAINST THE DISTRICT COURT JUDGE WERE NOT PROPERLY PRESERVED FOR ARGUMENT EITHER TO THE DISTRICT COURT OR TO THE COURT OF APPEALS, AND THE COURT OF APPEALS WAS CORRECT IN FINDING THAT THE EVIDENCE PRESENTED SHOWED NO BIAS 9

III. HOANG'S ARGUMENT REGARDING THE QUASI-JUDICIAL IMMUNITY OF RESPONDENT JAMES A. HERMAN, SHERIFF OF ALLEN COUNTY, IS WITHOUT MERIT 17

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CITATION TO REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE

This case was decided below by an unpublished and unreported order of the United States District Court, Northern District of Indiana, Fort Wayne Division, dated December 17, 2001. The full text of the order is included in the Appendix to Petitioner's Petition for Writ of Certiorari, at pp. A-6 to A-22.

The United States Court of Appeals for the Seventh Circuit entered its Order on the appeal on December 17, 2001, in an unpublished opinion. The full text of that order is included in the Appendix to Petitioners Petition for Certiorari, at pp. A-1 to A-5. It is reported as an unpublished opinion in *Hoang v. Ummel,* 24 Fed.Appx. 613, 2001 WL 1631716 (7th Cir. 2001).

BASIS FOR JURISDICTION

This Court has jurisdiction to consider opinions of the Seventh Circuit Court of Appeals upon the filing of a writ of certiorari pursuant to 28 U.S.C. § 1254. Petitioner's Petition for Writ of Certiorari was placed on the docket on August 1, 2002. Under Rule 15.3 of the Rules of the Supreme Court of the United States, Respondents, if they so choose to respond, must file briefs in opposition by August 31,2002.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

In addition to the relevant constitutional provisions and statutes which Petitioner sets forth in his Petition for Certiorari, Pet. pp. 1-5, the Respondents submit that the following additional statutes are involved in this matter.

28 U.S.C. § 2283. *Stay of State court proceedings.*

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

Also, the full text of 28 U.S.C. § 455 (a), (b)(1) and (b)(2) are set forth as follows:

28 U.S.C. § 455. *Disqualification of justice, judge, or magistrate judge*

> Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
>
> (b) He shall also disqualify himself in the following circumstances:
>
> (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
>
> (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

STATEMENT OF THE CASE

Petitioner seeks to invalidate an unpublished order of the Seventh Circuit which found that the federal courts lack jurisdiction over his 42 U.S.C. § 1983 claim against the several Respondents. The Seventh Circuit upheld the order of the district court and found that Petitioner was seeking review of a state court decision, and under the *Rooker-Feldman* doctrine the federal courts did not have jurisdiction over issues inextricably intertwined with the state court case. Petitioner presents no compelling reason for the Supreme Court to grant certiorari on a precedent well established in this Court.

Petitioner also challenges the Seventh Circuit's decision denying his request to have the district court judge disqualified pursuant to 28 U.S.C. § 455(a) and (b). Petitioner raised the issue for the first time with his appeal of the district court's ruling. The Seventh Circuit gave due consideration to his request and found that exceptional circumstances did not exist to grant a recusal in this case. Although the Petitioner alleges that there is a conflict between the circuits, Respondents submit that the Seventh Circuit's treatment of this issue provides a mechanism for relief under §455, and that no genuine conflict exists. Petitioner offers no compelling reason for the Supreme Court to grant Certiorari on this issue.

Finally, Petitioner challenges the finding of the Seventh Circuit on the issue of the quasi-judicial immunity of law enforcement officers who enforce valid orders of a state court. Although this ruling is not controlling of the Seventh Circuit's order, it also presents no compelling issues or conflicts which require review.

ARGUMENT OF THE RESPONDENTS

I.

THE *ROOKER-FELDMAN* DOCTRINE BARS HOANG FROM SEEKING RELIEF IN FEDERAL DISTRICT COURT ON CLAIMS WHICH ARISE FROM A STATE COURT'S JUDGMENT.

The district court and the Court of Appeals in the instant case each found that *Rooker-Feldman* barred Hoang from having his claim considered in the federal courts. Pet.App. A-4, A-17. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923). "If the constitutional claims presented to a United States District Court are inextricably intertwined with the state court's denial in a judicial proceeding of a particular plaintiff's application for admission to the state bar, then the District Court is in essence being called upon to review the state court decision. This the District Court may not do." *Feldman* 460 U.S. at 483 n.16, 103 S.Ct. at 1316. Hoang argues that *Rooker-Feldman* has no application in his case.

Hoang contends in his Petition for Writ of Certiorari that his personal property was removed "without due process or a state court order" and that this happened independently from a state court judgment, and thus, was not inextricably intertwined with a state court judgment. Pet. pp. 23-25. The facts of the case do not support this allegation. Hoang's property was removed upon an eviction order of the state court, and the eviction order is precisely what prompted Hoang to seek injunctive relief in federal court. As the district court pointed out in its Order dismissing the case, "Hoang also filed on [May 8, 2001] a '(Temporary) Motion to Stay the State Court's Order' in which he 'respectfully moves the Court to

issue an order to stay state court's order of possession until further order of this court.'" Pet.App. A-7. The district court refused to overturn or stop the state court eviction order, finding that "under even the most liberal standards Hoang's complaint stated no claim upon which relief could be granted. The court further noted that to the extent Hoang was attempting to overturn or stop a state court eviction proceeding, the *Rooker-Feldman* doctrine would bar Hoang's request." *Id.* at A-7, A-8.

Hoang argues, without citation to any authority in support, that *Rooker-Feldman* does not apply to injunctive relief. Pet. p. 25. The decisions from the circuits do not agree with this overly broad assessment. *See Patmon v. Michigan Supreme Court* 224 F.3d 504, 510 (6thCir.2000), *reh'g and suggestion for reh'g en banc denied* (finding that plaintiff's request for injunction and monetary damages required district court to review a prior state judicial determination, thus district court correctly determined that it lacked subject matter jurisdiction); *Garry v. Geils*, 82 F.3d 1362, 1370 (7th Cir.1996) (holding that the application of *Rooker-Feldman* applies to both damages and injunctive relief).

Attempts by Hoang to require the district court to enjoin enforcement of a State court order, or to otherwise stay proceedings, also run afoul of the Anti-Injunction Act, 28 U.S.C. § 2283, which states that "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." This Court considered the issue in *Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 90 S.Ct. 1739, 26 L.Ed.2d 234 (1970).

> [S]ince the statutory prohibition against such injunctions in part rests on the fundamental

> constitutional independence of the States and their courts, the exceptions should not be enlarged by loose statutory construction. Proceedings in state courts should normally be allowed to continue unimpaired by intervention of the lower federal courts, with relief from error, if any, through the state appellate courts and ultimately this Court.

Id. 398 U.S. at 287, 90 S.Ct. at 1743. *See also Mitchum v. Foster,* 407 U.S. 225, 233-38, 92 S.Ct. 2151, 32 L.Ed.2d 705 (1972) (discussing the exceptions). As to Hoang's case, no exception applies. First, there is no statute that particularly authorizes the federal courts to issue injunctions in the circumstances of this case. Second, the injunction could not have been used in aid of the district court's jurisdiction because the district court found that it lacked jurisdiction over all claims. Third, the final exception,"was designed to permit a federal court to prevent litigation of an issue that previously was presented to and decided by the federal court. It is founded in the well recognized concepts of res judicata and collateral estoppel." *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 147, 108 S.Ct. 1684, 100 L.Ed.2d 127 (1988). Hoang presents no argument to support an assertion that the district court could exercise the power to grant injunctive relief in his case. Hoang's request for injunctive relief in federal court was appropriately denied.

Hoang's argument that the consequences flowing from the eviction proceeding were independent of the eviction, and, therefore, not subject to Rooker-Feldman, is also unavailing. A plaintiff may not circumvent the *Rooker-Feldman* doctrine simply by casting his complaint in the form of a federal civil rights action. *Maple Lanes, Inc. v. Messer,* 186 F.3d 823, 825 (7th Cir.1999), *cert. denied,* 528 U.S. 1118, 120 S.Ct. 939, 145 L.Ed.2d 817. Hoang's civil rights claim arises from the same facts as the eviction action, and the district court was right to decline

to accept jurisdiction of the case. Indeed, Hoang continues to avail himself of his right to review and appeal to Indiana's Court of Appeals, of the state court's alleged wrongful eviction and damages arising as a consequence. On May 31, 2002, the Indiana Court of Appeals further addressed Mr. Hoang's case. In *Hoang v. Jamestown Homes, Inc.*, 768 N.E.2d 1029 (Ind.Ct.App.2002), *reh'g denied*, the Court of Appeals found that (1) the small claims court had jurisdiction over the ejectment action (2) bifurcation of the proceedings for possession of his unit from proceedings on Hoang's counterclaim for damages was proper, and (3) Hoang violated his occupancy agreement when he refused to allow employees of the cooperative corporation to enter and inspect the unit. *Id.* at 1030-1040.

Hoang presents no authority which conflicts with the Seventh Circuit's application of *Rooker-Feldman*. Additional support for the application of *Rooker-Feldman* in this case is also found in the Anti- Injunction Act. Hoang also presents no compelling reason for this Court to exercise its supervisory. power over the Seventh Circuit, as required by U.S.Sup.Ct.Rule 10, under this Court's power to grant certiorari on this issue. An issue "which has few if any ramifications beyond the instant case does not satisfy any of the criteria for the exercise of this Court's discretionary jurisdiction. See this Court's Rule 10." *Bartlett v. Stephenson*, ___ U.S. ___, 122 S.Ct. 1751, 1753, 152 L.Ed.2d 1015 (2002). Rule 10 states specifically that "[a] petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Hoang presents no tangible argument to support certiorari on the issue of the Seventh Circuit's application of the *Rooker-Feldman* doctrine.

II.

HOANG'S ALLEGATIONS OF BIAS AGAINST THE DISTRICT COURT JUDGE WERE NOT PROPERLY PRESERVED FOR ARGUMENT EITHER TO THE DISTRICT COURT OR TO THE COURT OF APPEALS, AND THE COURT OF APPEALS WAS CORRECT IN FINDING THAT THE EVIDENCE PRESENTED SHOWED NO BIAS.

A. The Allegations.

Hoang's allegation of bias on the part of the district court judge was not asserted until the filing of his appeal with the Seventh Circuit Court of Appeals, and Hoang again presents these allegations, along with additional allegations, in his Petition for Writ of Certiorari. With regard to the specific allegations of bias, Hoang ignores the need to present or authenticate evidence, with the bulk of his allegations being in the form of representations by Hoang himself of perceived bias by the judge.

Hoang spins a very fanciful tale in an effort to support such a serious allegation. The district judge who presided over Mr. Hoang's case in the United States District Court for the Northern District of Indiana, Fort Wayne Division, was William C. Lee, the Chief Judge of the Northern District. In his Petition, Hoang reiterates several "conflicts of interest" previously presented to the Seventh Circuit, which he claims require the disqualification of Judge Lee. Hoang also submits new allegations which are presented for the first time in his Petition for Certiorari. These alleged conflicts are restated here and are addressed in *seriatim*.

1. ***Alleged Conflict due to Judge Lee's former association with a law firm.*** Hoang claims that a

conflict of interest exists as a result of Judge Lee's former association and partnership in the law firm of Hunt, Seudhoff, Borror, Eilbacher & Lee. That law firm is now known as Hunt Seudhoff Kalamaros, LLP, and it was the law firm of record for two of the named defendants: R. Scott Perry and National Moving Systems, Inc. Hoang claims that Judge Lee "has still drawn a salary after leaving the law firm." Although this statement seems to imply that the Judge may still be receiving benefits from the firm, Hoang's only reference to support his claim is to a newspaper article appearing in a Fort Wayne Newspaper in June of 1982. The article was never placed in the record before the district court, and was first presented to the Court of Appeals during the briefing stage of Hoang's appeal.

The newspaper article, which is over 20 years old, makes reference to the relative incomes of the judges of the Northern District of Indiana. The article also references payments to Judge Lee by his former law firm for an apparent buy-out of his interest in the firm. The article reports that he would be receiving payments through 1983. There is therefore no indication that Judge Lee has received any payments or benefits from his former law firm for over 18 years.

Hoang also claims that prior to the time Judge Lee left his law firm to assume the district court bench in August of 1981, his law firm represented Jamestown (presumably, the respondent, Jamestown Homes, Inc.). Again, Hoang offers no tangible proof to support his claim. However, he does seem to suggest a connection through an insurance company. "[W]hen Judge Lee was a partner with 'Hunt, Suedhoff, Borror, Eilbacher & Lee', his law firm represented Jamestown through its insurance company." Pet. p.6.

Although this tenuous connection between the judge and one of the respondents may or may not have existed more

than 20 years ago, given the record presented, one can only speculate as to the facts which support the allegation. No Court should be required to do so.

2. ***Alleged Conflict due to Judge Lee's alleged ownership interest in apartment complex.*** Hoang next attacks Judge Lee's former ownership in an apartment complex which is not a party to this case. Hoang alleges, without documentation or admissible evidence, that Judge Lee once had an ownership interest in Brentwood Apartments, and that the law firm of Haller & Colvin, P.C., which represents the respondent, James A. Herman, Sheriff of Allen County, also represented the apartment complex in small claims matters before the respondent, Jerry L. Ummel, Magistrate, Allen Superior Court, Small Claims Division. Hoang submits no specific dates when Judge Lee might have had an ownership interest in these apartments, he submits no particular cases or dates when Haller & Colvin might have appeared before the magistrate on behalf of this apartment complex, and he does not allege that Brentwood Apartments is affiliated in any way with any of the parties in the instant case. He does not allege that Judge Lee has a financial interest in the outcome of the proceedings in the instant case as a result of a former alleged interest in Brentwood apartments, or otherwise.

3. ***New Allegations of Judicial Improprieties in Petition for Certiorari.*** Hoang goes on to engage in a further attack of Judge Lee in his Petition for Certiorari, where for the first time, Hoang suggests that while his case was pending before the Court of Appeals, Judge Lee interposed his influence upon the Seventh Circuit Judges to rule against Hoang. Hoang claims that he obtained information from the "Seventh Circuit's Deputy Clerk" that on December 13, 2001, Judge Lee "called one of the three assigned Circuit Judges to explain his side of the 'conflicts of interest.' And so, on the next day of Friday, December 14, 2000, this case

was immediately submitted to said three Circuit Judges who hastily affirmed Chief Judge Lee's decision on the following working day of Monday, December 17, 2001." Pet. p. 23. Hoang also engages in unsupported allegations that the district judge took "kickbacks" in a criminal matter. Pet. p. 21, n.44. Respondents submit that these unsupported and scurrilous accusations have no place in a Petition for Certiorari to the Supreme Court, and without a proper foundation or supporting evidence, should be stricken or disregarded.

Hoang mistakenly argues that under the findings of the Seventh Circuit, "the District Judge is not required to disclose his or her conflict of interest, bias and prejudice against a party... but the party is required to discover the District Judge's conflict of interest, bias and prejudice." Pet. p. 19. There is no such finding by the Seventh Circuit in this case. Indeed, the Court of Appeals considered Hoang's request for relief under both 28 U.S.C. §455(a) and 28 U.S.C. §455(b).[1] The Court found that Hoang's request for the Judge's recusal was not supported under either section. Pet.App. pp. A-4, A-5.

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[1]28 U.S.C. § 455 (a) and (b)(2) read as follows:

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

* * *

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it. . . .

B. Requirements for recusal under 28 U.S.C. § 455.

Contrary to Hoang's assertions, the Seventh Circuit followed the long established precedent that a judge's recusal under § 455 is self -executing and the judge is obligated to recuse himself *sua sponte* under the stated circumstances. *Taylor v. O'Grady*, 888 F.2d 1189, 1200, 1201 (7th Cir.1989). A judge is under a self-enforcing obligation to recuse himself where legal grounds exist for disqualification. The standard to be applied is objective and not subjective. *U.S. v. Garrudo*, 869 F.Supp. 1574 (S.D.Fla. 1994), *aff'd, U.S. v. Cerceda*, 139 F.3d 847 (11th Cir.1998), *reh'g granted and vacated*, 161 F.3d 652, *and on reh'g* 172 F.3d 806 (1999), *cert. denied DeLa Mata v. U.S.*, 528 U.S.985, 120 S.Ct. 444, 145 L.Ed.2d 362 (1999). An interest which is remote, contingent or speculative is not the kind which reasonably brings judge's impartiality into question for disqualification purposes. *In re Drexel Burnham Lambert Inc.*, 861 F.2d 1307 (2nd Cir.1988) *reh'g denied*, 869 F.2d 116 (1989), *cert. denied, Milken v. S.E.C.* 490 U.S. 1102, 109 S.Ct. 2458, 104 L.Ed.2d 1012 (1989).

1. ***Application of 28 U.S.C. § 455(a).*** The Court of Appeals took into account Hoang's attempt to raise the issue of conflict of interest for the first time at the appellate level. The Court considered 28 U.S.C. § 455(a) which requires a federal judge to disqualify himself "in any proceedings in which his impartiality might be questioned." The Court found that Hoang waived his right to relief under 28 U.S.C. § 455(a) "because he failed to move for recusal until after the district court dismissed the case." Pet.App. p. A-5. The Court of Appeals relied on *U.S. v. Ruzzano*, 247 F.3d 688 (7th Cir.2001), which outlines the Seventh Circuit's position on the application of § 455(a), and states that a claim can be waived even though the defendant discovered alleged grounds for recusal after being sentenced. *Id.* 247 F.3d at 694.

Hoang attempts to distinguish the application of §455(a) in the Fifth Circuit from its application in the Seventh Circuit. Pet. pp. 19, 20. Respondents submit that the application of §455(a) between the circuits is not in conflict. Hoang is correct when he states that the Fifth Circuit in *U.S. v. Brown*, 539 F.2d 467 (5th Cir.1976) confers upon itself jurisdiction to consider claims of bias under §455(a). However, Respondents do not agree that the Seventh Circuit forever forecloses a §455(a) review if it is not raised in the district court. Indeed, this Court did give Hoang that review, and relied on *Ruzzano* in so doing. Pet. App. p. A-4, A-5. The Seventh Circuit requires the filing of a writ of mandamus to raise § 455(a) recusal challenges, otherwise they are waived, *Id.* 247 F.3d at 694. Other circuits, although not requiring the filing of a writ of mandamus, have also found waiver of § 455(a) in cases where a party fails to preserve this issue at the district court level. *Id.* (*citing U.S. v. Mathison*, 157 F.3d 541, 545-45 (8th Cir.1998); *U.S. v. Barrett*, 111 F.3d 947, 952-53 (D.C.Cir.1997)).

Significantly, the Seventh Circuit has fashioned a safety valve for the exceptional case where waiver would otherwise have barred review. In the instant case, the Seventh Circuit did not end its analysis of § 455(a) after finding waiver. It went on, as it did in *Ruzzano*, to acknowledge that under "exceptional circumstances" an appellant might be excused for failing to timely seek a recusal. The Seventh Circuit found that Hoang had not demonstrated such circumstances. Pet.App. pp. A-4, A-5. The Court of Appeals , in reaching this conclusion, necessarily examined the record in the case and in citing *U.S. v. Troxell*, 887 F.2d 830, 833 (7th Cir.1989), found specifically that "there is no evidence in the record that the alleged grounds for recusal had any effect on Hoang's case or affected his substantial rights in any way." Pet.App. p. A-5. Hoang, in effect, is asking the Supreme Court to review

allegations of bias which are not supported in the record and which did not affect his rights in any way.

2. *Application of 28 U.S.C. § 455(b).* The Seventh Circuit also acknowledged that Hoang raised a § 455(b) claim for the first time on appeal. Pet.App. p. A-5. Hoang's § 455(b) argument is essentially merged with his arguments on § 455 (a). Pet. p. 19-21. However, in a specific reference to §455(b), Hoang argues that as a result of his failure to raise the issues below, the Seventh Circuit found that he waived the right to argue them on appeal. Pet. p. 20. The Seventh Circuit actually found that after considering the allegations made by Hoang, and in applying the §455(b) requirement that there be a showing of "actual interest or bias on the part of the judge," the facts alleged did not require the Judge to recuse himself. Pet. App. p. A-5. See, *U.S. v. Hines*, 696 F.2d 722 (10th Cir.1982) (finding that the recusal of the trial judge was not required under § 455(b)(1) where there was no adequate proof of the trial judge's actual bias or prejudice); *U.S. v. Nacrelli*, 543 F.Supp. 798, 800 (E.D.Pa. 1982) (holding that absent allegation of factual basis to support petitioner's claim that trial judge should have recused himself, it was completely reasonable for judge to preside over the trial); *U.S. v. Bosch*, 951 F.2d 1546, 1549 (9th Cir.1991), *cert. denied*, 504 U.S. 989, 119 L.Ed.2d 594, 112 S.Ct. 2975 (1992) (finding that the failure of appellant to show actual bias, or actual prejudice caused by an alleged bias, precluded relief under §455(a)). The Seventh Circuit's ruling on this issue is entirely consistent with established precedent.

Hoang does not establish that a conflict exists in the circuits sufficient to grant certiorari. Hoang's arguments regarding recusal under both § 455 (a) and (b) were adequately considered by the Seventh Circuit. He simply is not happy with the outcome. Hoang offers no compelling reason as required by Rule 10 to substantiate the granting of certiorari.

III.

HOANG'S ARGUMENT REGARDING THE QUASI-JUDICIAL IMMUNITY OF RESPONDENT JAMES A. HERMAN, SHERIFF OF ALLEN COUNTY, IS WITHOUT MERIT.

In Hoang's final argument in his Petition for Certiorari, he alleges that officers of the Allen County Police Department ("County Sheriff's Deputies") are not entitled to immunity in this case. The Seventh Circuit addresses this issue in a footnote. "While we affirm the district court's dismissal of the entire complaint based on the *Rooker-Feldman* doctrine, we note that the district court was also correct in asserting that . . . the law enforcement officers had qualified immunity for their actions in enforcing the ejectment order, *see Homola v. McNamara*, 59 F.3d 647, 651 (7th Cir.1995)." Pet.App. p. A-4. Respondents submit that this finding is not controlling of the case and it is either an alternative ruling or dicta in the Seventh Circuits unpublished opinion.

Since both the district court and the Seventh Circuit correctly ruled that the entire complaint should be dismissed based on the Rooker Feldman doctrine, it is unnecessary for this Court to grant Certiorari to review the immunity issue. Further, Hoang offers no sound basis for review of the decision. Hoang cites only *Malley v. Briggs*, 475 U.S. 335, 341, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986) for the proposition that the actions of the County Sheriff's Deputies were "not ministerial acts but clearly violations of established law, e.g. § 1983." Pet.App. p. 30. In *Malley*, this Court ruled that police officers where entitled to qualified immunity and not absolute immunity for causing an unconstitutional arrest by presenting an inappropriate affidavit to a judicial officer in seeking a warrant. *Id.* at 475 U.S. at 345, 106 S.Ct. at 1098. In the instant case, the County Sheriff's Deputies were acting on a judicially

valid eviction order. This action is protected under quasi-judicial immunity, and the district court in the instant case was correct to find sufficient grounds for dismissal of Hoang's claim in that regard.

Support is found in *Henry v. Farmer City State Bank*, 808 F.2d 1228 (7th Cir.1986), where the plaintiff alleged that a sheriff violated his civil rights in enforcing a foreclosure judgment. The sheriff in *Henry* allegedly entered the plaintiff's house, seized non-exempt property and later sold that property at a public auction, all pursuant to a circuit court order directing the sheriff to enforce a judgment. *Id.* at 1238. The plaintiff also alleged that the sheriff falsely charged the plaintiff with contempt of court in connection with the refusal to comply with the order. *Id.* The district court dismissed the claim against the sheriff and this dismissal was upheld by the Seventh Circuit, which found as follows:

> Non-judicial officials whose official duties have an integral relationship with the judicial process are entitled to absolute immunity for their quasi-judicial conduct. *Ashbrook v. Hoffman*, 617 F.2d 474, 476 (7th Cir.1980). Although immunity is normally extended to those performing discretionary and not ministerial acts, "those performing ministerial acts under a judge's supervision and intimately related to judicial proceedings have quasi-judicial immunity." *Id.* at 477 n. 4; see *Waits v. McGowan*, 516 F.2d 203, 206 (3d Cir.1975) (official entitled to absolute immunity afforded judge if "he is performing a ministerial function at the direction of the judge"); *Duba v. McIntyre*, 501 F.2d 590, 592 (8th Cir.1974) (quasi-judicial absolute immunity extended to police and other court officers "for purely ministerial acts

> where they do nothing other than perform orders issuing from a court").
>
> Sheriff Massey was at all times acting pursuant to an official court order to enforce a validly entered judgment when he performed the allegedly wrongful acts of which the Henrys now complain. It is difficult to think of a task more intimately related to a judicial proceeding than that of enforcing a money judgment entered by a court. Because the Sheriff was acting in furtherance of his "official duties in aid of the court," *id.* at 477, he is entitled to quasi-judicial absolute immunity from suit for damages arising from those acts.
>
> The proper procedure for a party who wishes to contest the legality of a court order enforcing a judgment is to appeal that order and the underlying judgment, not to sue the official responsible for its execution. See *Ashbrook*, 617 F.2d at 477.

As in this instance, the Henrys did pursue state appeal remedies, and the Seventh Circuit reasoned as follows.

> To allow the Henrys to attack the order collaterally by bringing a § 1983 suit against the Sheriff for damages would require sheriffs and other court officers who enforce properly entered judgments pursuant to facially valid court orders to act as appellate courts, reviewing the validity of both the enforcement orders and the underlying judgments before proceeding to collect on them. Such a result is obviously untenable."

Id. 808 F.2d at 1238.

Hoang's §1983 claim against the Allen County Sheriff or any of the law enforcement officers must fail under the facts presented since all actions were done pursuant to a valid order of eviction, which order has been upheld in Hoang's recent appeal to the Indiana Court of Appeals. *Hoang*, 768 N.E.2d at 1035.[2]

Hoang's claim that the sheriff is not entitled to qualified immunity is unsupported. There exists no sufficient conflict in the jurisdictions on this issue of quasi-judicial immunity, and the ruling of the Seventh Circuit, which amounts to an alternative ruling or dicta, does not evoke a level of departure from usual judicial proceedings necessitating the granting of certiorari.

IV.

CONCLUSION

The petition for writ of certiorari should be denied.

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[2]In Hoang's Petition, he alleges, *inter alia*, that Sheriff's deputies "broke his furniture and . . . helped themselves with [sic] three (3) boxes of his personal property." Pet. p. 30. Hoang makes no citation to the record of these events, and indeed they were not alleged in the district court. These are additional unsupported accusations which have no place in a Petition for Certiorari to the Supreme Court. Hoang presents no foundation nor supporting evidence, nor any proof that these accusations where ever made in the record, and as such they should not be considered.

Dated this 30th day of August, 2002.

Respectfully submitted,

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